

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.

08 Civ. 00194 (JSR)(GWG)

**DEFENDANT'S LOCAL  
RULE 56.1(b) STATEMENT  
IN OPPOSITION TO  
PLAINTIFF'S SECOND MOTION  
FOR SUMMARY JUDGMENT**

Defendant Interstate Chemical Corporation ("Interstate") submits this Local Rule 56.1(b) Statement in opposition to the latest motion for summary judgment filed by plaintiff Mitsubishi International Corporation ("MIC"), and in specific response to the numbered paragraphs of its Local Rule 56.1(a) Statement, dated August 14, 2008 ("MIC's 8/14/08 56.1(a) Statement").

"The Parties and Jurisdiction"

1. For purposes of this motion, Interstate does not dispute ¶ 2 of MIC's 8/14/08 56.1(a) Statement.

2. Not disputed.

3. For purposes of this motion, Interstate does not dispute ¶ 3 of MIC's 8/14/08 56.1(a) Statement.

4. Not disputed.

5. Not disputed.

"The Agreement"

6. Not disputed.

7. Disputed. On December 4, 2007, Interstate's Director of Chemical Procurement, Lori Cirillo, inquired with MIC's marketing manager, Zack Ferguson-Steger, regarding the availability of a barge of methanol for possible delivery in late December by MIC to Interstate's customer Owensboro Grain Company, LLC ("OGC"), in Owensboro, Kentucky. OGC planned on using the methanol barge for its new biodeisel plant on the Ohio River. The substance of the December 4, 2007 conversation between Zack Ferguson-Steger of MIC and Lori Cirillo of Interstate was that MIC could load a barge of methanol from its barge loading facility in St. Rose, Louisiana for Interstate, but could not commit to any specific loading date. *See* April 11, 2008 Affidavit of Lori Cirillo ("Cirillo Aff."), Exhibit H to MIC's 8/14/08 56.1(a) Statement at ¶¶ 3, 4.

8. Not disputed.

9. Not disputed.

10. Interstate does not dispute that on December 5, 2007, Mr. Ferguson-Steger sent an email to Ms. Cirillo, but does dispute the characterization of the content of that email which speaks for itself.

11. Interstate concedes that it did not call MIC within the next ten days. However, Mr. Ferguson-Steger of MIC called Ms. Cirillo on December 13, 2007, which was within the ten day time frame. The substance of this conversation was that MIC could not deliver the barge anytime before December 24, 2007, because that was when MIC "had a vessel coming in" with methanol. *See* Cirillo Aff. (Ex. H to MIC's 8/14/08 56.1(a) Statement) at ¶ 15).

12. Not disputed.

13. Disputed. In its May 18, 2008 Memorandum Decision, the Court found the existence of a contract between the parties specifically based on the December 4, 2007 telephone exchange between Mr. Ferguson Steger and Ms. Cirillo and the subsequent December 4 email -- not the "various factual basis" asserted in MIC's initial moving papers. *See* May 18, 2008 Memorandum Decision, MIC's 8/14/08 56.1(a) Statement Ex. M at pg. 4. Significantly, this Court held that the existence of a valid contract "is not the end of the inquiry." *Id.* at 5.

"MIC's Pre-Discovery Summary Judgment Motion"

14. Not disputed.

15. Not disputed.

16. Not disputed.

17. Disputed. Interstate's arguments in opposition to MIC's prior summary judgment motion speak for themselves. Interstate argued that to the extent that an agreement is found to exist between the parties, it includes a broad *force majeure* clause in accordance with applicable trade usage that relieves the parties to a spot purchase order of bulk chemicals for any cause beyond their reasonable control. *See* MIC's 8/14/08 56.1(a) St. Ex. G at 2-3.

18. Not disputed.

19. Interstate does not dispute the language quoted from this Court's May 18, 2008 Memorandum Decision.

20. Not disputed.

"Discovery"

21. Not disputed.

22. Not disputed.

23. Disputed. Interstate's April 14, 2008 56.1(b) Statement (Ex. A hereto) included sworn affidavit and declaration testimony from Albert Puntureri, President of Interstate, Rich Jukiewicz, a Senior Purchasing Agent for Research Organics, Inc., a manufacturer and supplier of biochemicals; and Edward Swinderman, a former Methanol Business Manager for Lyondell Chemical. These sworn statements disclosed the identity of these witnesses, their industry background, as well as the substance of their testimony concerning the usage of trade that relieved both a buyer and seller of their obligations under a spot purchase of bulk chemicals for any cause beyond their reasonable control. (See Interstate's April 14, 2008 56.1(b) Statement, Ex. A hereto at Exs. B, F, G).

Attached as Exhibit B are Declarations from Messrs. Jukiewicz and Swinderman reflecting that they were not hired or retained by Interstate to provide their testimony in this case, and a Declaration from Mr. Puntureri confirming that his duties as President of Interstate do not regularly include giving expert testimony.

24. Disputed. MIC's statement in this paragraph ignores the disclosures contained in the sworn statements of Messrs. Puntureri, Jukiewicz, and Swinderman which were submitted with Interstate's April 14, 2008 56.1(b) Statement. MIC never requested any further disclosures from these witnesses, nor sought any depositions from them or anyone on behalf of Interstate. All of MIC's discovery requests in this case are attached as Exhibit C.

25. MIC's latest summary judgment motion also ignores its own documents and Rule 30(b)(6) deposition testimony concerning its acknowledgement of the

applicable industry custom that excuses a party's performance under a spot purchase order for any cause beyond their reasonable control:

(a) The "General Terms and Conditions of Sale" that MIC proposed to Interstate included the provision that:

FORCE MAJEURE: Seller shall not be liable for any delay of for failure to perform its obligations hereunder for *any cause beyond its reasonable control*, which affects Seller or any other person (whether known or unknown to Buyer) involved in the sale, manufacturing, supply, shipment or delivery of the Goods. Shipment or delivery dates shall be extended for a period equal to the time lost by reason of any such cause; provided, however, that if any such delay exceeds ninety (90) days, either party shall have the right to cancel this Contract with respect to such shipment or delivery by written notice to the other party without any liabilities to the other party. Force majeure shall not excuse any non-payment by Buyer. Except as otherwise provided herein, UCC section 2-615 shall govern the rights of both parties hereto in the event of such delay or non-performance.

(MIC 000006-9)(Exhibit D hereto)(emphasis added). While this proposed term only relieved the "Seller" of its obligations as a result of "any cause beyond its reasonable control, which affects Seller or any other person (whether known or unknown to Buyer) involved in the sale, manufacturing, supply, shipment or delivery of the Goods," it otherwise supports Interstate's position that the scope of the industry practice is to relieve parties to a "spot" purchase order of their obligations for "any cause beyond their reasonable control."

(b) MIC's Rule 30(b)(6) designee, Thomas Reszler, the MIC's Manager for its Methanol and Ethanol Department, testified that the "General Terms and Conditions of Sale" that MIC proposed to Interstate, including the clause quoted above, "are fairly standard" in the industry. See MIC's Rule 30(b)(6) designation and Interstate's Rule

30(b)(6) Deposition Notice, attached as Exhibit E hereto); *see also* Reszler Dep. Tr., Exhibit F hereto at 30:17-31:3).<sup>1</sup>

(c) Mr. Reszler also testified about the application of this industry practice. Although Mr. Reszler “could not recall” a situation like that presented here where a customer was seeking to cancel a purchase order due to U.S. Coast Guard restrictions preventing delivery of the methanol barge, he otherwise testified that the “any cause beyond their reasonable control” language in MIC’s “General Terms and Conditions of Sale” also applied to MIC’s customers who experience problems beyond their reasonable control. (Reszler Dep., Exhibit F hereto at 46:20-48:19; 49:12-51:3).

WHEREFORE, based on the points and authorities set forth in Interstate’s accompanying Memorandum of Law, MIC’s latest Motion for summary judgment should be denied. Interstate also respectfully requests such other and further relief as this Court deems just and proper.

Dated: New York, New York  
August 26, 2008

SIMON•LESSER PC

By: 

Leonard F. Lesser, Esq.

420 Lexington Avenue  
New York, New York 10170  
T:212.599.5455  
F:212.599.5459  
[llesser@simonlessers.com](mailto:llesser@simonlessers.com)

Attorneys for defendant Interstate Chemical  
Corporation

---

<sup>1</sup> Interstate has not submitted those portions of Mr. Reszler’s deposition testimony supporting Interstate’s defense that MIC did not mitigate any alleged damages in a commercially reasonable manner because MIC’s latest motion concedes that there are issues of fact on the issue of the amount of damages, if any, MIC can recover as a result of the alleged breach by Interstate. *See* MIC’s Brief at 3. Portions of that testimony were designated by MIC as “confidential” and Interstate is mindful of the Court’s June 23, 2008 Protective Order which directs the parties to minimize court filings under seal.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.

08 Civ. 00194 (JSR)(GWG)

**DEFENDANT'S LOCAL  
RULE 56.1(b) STATEMENT  
IN OPPOSITION TO  
PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

Defendant Interstate Chemical Corporation ("Interstate") submits this Local Rule 56.1(b) Statement in opposition to the Motion for summary judgment filed by plaintiff Mitsubishi International Corporation ("MIC"), and in specific response to numbered paragraphs of its Local Rule 56.1(a) Statement.

1. For purposes of this motion, Interstate does not dispute ¶ 1 of MIC's 56.1(a) Statement.
2. Not disputed.
3. For purposes of this motion, Interstate does not dispute ¶ 3 of MIC's 56.1(a) Statement.
4. Not disputed.
5. Not disputed.
6. Disputed. On December 4, 2007, Interstate inquired with MIC about the availability of a barge of methanol for possible delivery in late December to Interstate's customer Owensboro Grain Company, LLC ("OGC"), in Owensboro, Kentucky for its new biodeisel plant on the Ohio River. The substance of the December 4, 2007 conversation between Zack Ferguson-Steger of MIC and Lori Cirillo of Interstate was that MIC could load a barge of methanol from its barge loading facility in St. Rose, Louisiana for Interstate, but could not

commit to any specific loading date. *See* April 11, 2008 Affidavit of Lori Cirillo (“Cirillo Aff.”), Exhibit A hereto ¶¶ 3, 4.

7. Not disputed.

8. Not disputed.

9. Interstate does not dispute that on December 5, 2007, Mr. Ferguson-Steger sent an e-mail to Ms. Cirillo, but does dispute the characterization of the content of that e-mail which speaks for itself.

10. Disputed. The “form contract” attached to Mr. Ferguson-Steger’s December 5, 2007 e-mail does not “contain the same material terms MIC and Interstate agreed to the day before” as alleged. Rather, the document contained many terms that were materially different than those discussed by the parties the day before, and also included one-sided terms in MIC’s favor never discussed that were inconsistent with industry practice, including, but not limited to:

(a) The proposed contract document had a firm delivery date of “December 20th, 2007,” which was materially different from the parties’ oral discussions, and Mr. Ferguson-Steger’s December 4, 2007 e-mail advising only that MIC could deliver a barge “loading Dec. 20 or later.” Even in his Affidavit, Mr. Ferguson-Steger is inconsistent on the delivery term he now claims was included in the alleged “agreement” created by the parties’ December 4, 2007 oral discussion. In one sentence, he asserts that MIC’s proposed contract document which had a “Shipment” term of “December 20th, 2007,” was the term the parties allegedly agreed to. *See* Ferguson-Steger Aff. ¶ 8. Yet in another sentence, he says that the delivery term was just sometime “in December 2007.” *See* Ferguson-Steger Aff. ¶ 21.

(b) The proposed contract document also had a one-sided *force majeure* clause excusing MIC’s performance “for any cause beyond its reasonable control.” While it is industry



custom to relieve both a buyer and seller of their obligations under a spot purchase of bulk chemicals for any cause beyond their reasonable control, it is most certainly not permissible for only one party to the transaction to have the benefit of such relief.

(c) The proposed contract also contained an arbitration clause requiring arbitration in New York City for any dispute over the transaction. The parties did not agree to this as MIC acknowledged by the fact that it commenced this litigation as opposed to an arbitration proceeding. *See* Cirillo Aff. (Ex. A) ¶¶ 8-13; *see also* April 11, 2008 Affidavit of Albert R. Puntureri (“Puntureri Aff.”), Exhibit B hereto ¶¶ 3-7.

11. Disputed. On Thursday, December 13, 2007, Mr. Ferguson-Steger called Ms. Cirillo to say that MIC could not deliver a barge of methanol anytime before December 24, 2007 because that was when MIC “had a vessel coming in” to MIC’s facility in St. Rose, Louisiana with methanol. *See* Cirillo Aff. (Ex. A) ¶ 15.

12. Interstate disputes the characterization of a “contract” between the parties. Interstate otherwise states that by e-mail the morning of December 18, 2007, Ms. Cirillo of Interstate informed Mr. Ferguson-Steger that it could not take delivery of a barge of Methanol because of OGC’s delay in obtaining Coast Guard/Homeland Security approval for its new biodeisel facility on the Ohio River where the barge of methanol was to be delivered. *See* Cirillo Aff. (Ex. A) ¶¶ 8-13; Puntureri Aff. (Ex. B) ¶¶ 13, 14; *see also* April 10, 2008 Affidavit of Mark Carlisle (“Carlisle Aff.”), Exhibit C hereto ¶¶ 3-7.

13. Interstate does not dispute that on December 19, 2007, Mr. Ferguson-Steger sent an e-mail to Ms. Cirillo, but does dispute the characterization of the e-mail which speaks for itself.

14. Interstate does not dispute that Ms. Cirillo responded to Mr. Ferguson-Steger’s e-mail, but does dispute the characterization of that response which speaks for itself.

15. Interstate does not dispute that Mr. Ferguson-Steger replied to Ms. Cirillo's response, but does dispute the characterization of that reply which speaks for itself.

16. Interstate does not dispute that Ms. Cirillo sent additional e-mails to Mr. Ferguson-Steger's on December 19 and 20, but does dispute the characterization of those e-mails which speak for themselves.

17. Interstate does not dispute that Mr. Ferguson-Steger sent an e-mail to Ms. Cirillo on December 20, 2007, but does dispute the characterization of that e-mail which speaks for itself.

18. Not disputed.

19. Disputed. On Thursday, December 13, 2007, Mr. Ferguson-Steger called Ms. Cirillo to say that MIC could not deliver a barge of methanol anytime before December 24, 2007 because that was when MIC "had a vessel coming in" to MIC's facility in St. Rose, Louisiana with methanol. *See* Cirillo Aff. (Ex. A) ¶ 15.

20. Disputed. On Thursday, December 13, 2007, Mr. Ferguson-Steger called Ms. Cirillo to say that MIC could not deliver a barge of methanol anytime before December 24, 2007 because that was when MIC "had a vessel coming in" to MIC's facility in St. Rose, Louisiana with methanol. *See* Cirillo Aff. (Ex. A) ¶ 15. No evidence has been submitted by MIC that the "vessel it had coming in" on or around December 24, 2007 was ordered after the December 4, 2007 communication between MIC and Interstate. Interstate also disputes that the methanol MIC alleges it sold to Tauber Petrochemical Company ("Tauber") on December 21, 2007 was product purportedly "reserved for sale" to Interstate." Exhibit D to MIC's Complaint reflects a sale of 10mb of methanol to Tauber for delivery sometime between December 21, 2007 and January 10, 2008. No evidence has been submitted by MIC establishing if and when the delivery actually occurred, or where and to whom it was delivered. Nor has MIC submitted any evidence

establishing this so-called “reservation of inventory” allegedly made as a result of the December 4, 2007 communications between MIC and Interstate. It is Interstate’s understanding that MIC produces methanol in Venezuela, and also purchases Venezuelan methanol from importers such as Metcall LLC. MIC then stores the methanol in its facilities for resale to brokers, distributors, and direct customers. Without submitting evidence as to MIC’s purchasing and storage activity for the methanol that was sold to Tauber, Interstate has no way of addressing the credibility of MIC’s contention that such methanol was “reserved for sale” to Interstate. *See Puntureri Aff.* (Ex. B) ¶¶ 16-19. Interstate has requested such information from MIC, which has not been produced. *See Interstate’s Document Requests, Exhibit D hereto, Request Nos. 7, 8, 11, and 12.*

21. Disputed. Industry market reports reflect that the market price for a “US Spot” barge of methanol for the last two weeks of December, 2007 was between \$2.52 per gallon and \$2.33 per gallon. Interstate believes that MIC and Tauber had an existing relationship, and that the price paid by Tauber for the barge in question was not at market price, but at a favorable rate in consideration for other business between the companies. *See Puntureri Aff.* (Ex. B) ¶¶ 24-26. Interstate has requested all documents and correspondence concerning MIC’s purported “prompt efforts to mitigate” as alleged in ¶ 22 of its Complaint (including the documents listed in MIC’s March 19, 2008 Initial Disclosures), as well as all documents and correspondence between MIC and Tauber. *See Interstate’s Document Requests (Exhibit D), Request Nos. 7, 8, 11, and 12; see also MIC’s Initial Disclosures, Exhibit E hereto.* MIC has yet to produce any of the requested disclosure.

22. Interstate otherwise disputes MIC’s core contention that Interstate was obligated to purchase a barge of methanol from MIC at the price of \$2.55 per gallon based on the parties’ oral and written communications. MIC initially proposed on December 4, 2007 that it could

supply a barge of methanol for Interstate “loading Dec. 20 or later.” *See* Cirillo Aff. (Ex. A) ¶¶ 4, 5. On December 13, 2007, MIC modified its proposal by stating that it could not deliver a barge of methanol to Interstate anytime before December 24, 2007 because that was when MIC “had a vessel coming in” with methanol; MIC otherwise made no commitment as to when delivery could and would in fact take place. *See* Cirillo Aff. (Ex. A) ¶ 15. Five days later, on December 18, 2007, Interstate explained to MIC that it could not take delivery of a barge which had yet to be loaded -- and which MIC represented it could not have loaded until sometime after December 24, 2007 at the earliest -- because of the delay in OGC receiving approval from the U.S. Coast Guard and the U.S. Department of Homeland Security for its new biodeisel facility on the Ohio River where the barge was to be delivered. *See* Cirillo Aff. (Ex. A) ¶¶ 16, 17. Interstate had no other place to put the barge. *See* Puntureri Aff. (Ex. B) ¶ 21. Based on industry practice, OGC’s inability to take delivery of a barge of methanol that had yet to be loaded should have relieved Interstate from any obligation to pay for the barge. *See* Cirillo Aff. (Ex. A) ¶ 18; Puntureri Aff. (Ex. B) ¶¶ 3-7; 20; April 10, 2008 Affidavit of Rich Jukiewics, Exhibit F hereto ¶¶ 4-5; April 14, 2008 Declaration of Edward Swinderman, Exhibit G hereto ¶¶ 6-9.

WHEREFORE, based on the points and authorities set forth in Interstate’s Memorandum of Law, MIC’s Motion for summary judgment should be denied as there are several disputed issues of material fact concerning: (a) what terms were included in the parties’ alleged agreement; (b) whether Interstate’s inability to take delivery of the proposed barge was excused based on industry practice; (c) the credibility of MIC’s core contention that it “reserved in its inventory” the barge of methanol for Interstate based on the parties December 4, 2007 communications; and (d) MIC’s alleged “prompt efforts to mitigate,” and its claimed right to recover from Interstate the difference

between the market price of methanol on December 4, 2007 and the price at which it sold a barge of methanol to Tauber sometime after December 24, 2007.

Interstate also respectfully requests such other and further relief as this Court deems just and proper.

Dated: New York, New York  
April 14, 2008

SIMON•LESSER PC

By: 

Leonard F. Lesser, Esq.

420 Lexington Avenue  
New York, New York 10170

T:212.599.5455

F:212.599.5459

[llesser@simonlesser.com](mailto:llesser@simonlesser.com)

Attorneys for defendant Interstate Chemical  
Corporation

# **Exhibit A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.  
-----

08 Civ. 00194 (JSR)(GWG)

**AFFIDAVIT**

STATE OF PENNSYLVANIA     )  
                                          ) ss.:  
COUNTY OF ALLEGHENY     )

Lori Cirillo, being sworn deposes and says:

1. I am the Director of Chemical Procurement at Interstate Chemical Corporation ("Interstate"). I have personal knowledge of the facts set forth below.
2. I submit this affidavit to correct some inaccuracies contained in the Affidavit of Zack Ferguson-Steger of Mitsubishi International Corporation ("MIC").
3. In connection with the anticipated transaction at issue in this lawsuit, I initially spoke with Mr. Ferguson-Steger on December 4, 2007 inquiring about the availability of a barge of Methanol for possible delivery in late December to Interstate's customer Owensboro Grain Company, LLC ("OGC"), in Owensboro, Kentucky for its new biodeisel plant on the Ohio River.
4. Mr. Ferguson-Steger stated that MIC could load a barge of Methanol from barge loading facility in St. Rose, Louisiana on the Mississippi River, but could not commit to any

specific delivery date, which was in line with Interstate's requirements as I had yet to receive confirmation from OGC that it could accept a Methanol barge at its new biodeisel facility.

5. Following that oral discussion, Mr. Ferguson-Steger sent his e-mail to me dated December 4, 2007 at 4:04 p.m. confirming his oral advice that MIC could load a barge of 10mb of Methanol at the then market price of \$2.55 per gallon "loading Dec. 20 or later."

6. This "or later" cautionary language was critical as MIC would not and did not commit to load on a specific date, nor did I on behalf of Interstate commit to a specific delivery date. Rather, MIC simply stated that a barge could be available for Interstate's purchase sometime after December 20, 2007.

7. The next day, December 5, 2007, Mr. Ferguson-Steger sent me a proposed contract document for this transaction and asked that I sign it and fax it back to him.

8. I did not do so as the document contained many terms that were materially different than those we discussed the day before, and also included one-sided terms in MIC's favor that were inconsistent with Interstate's prior dealings with MIC, and inconsistent with industry practice in general.

9. Most critically, the proposed contract document had a firm delivery date of "December 20th, 2007," which was materially different from my oral discussion with Mr. Ferguson-Steger and his December 4, 2007 e-mail advising that MIC was prepared to deliver a barge loading sometime "December 20 or later."

10. Even in his Affidavit, Mr. Ferguson-Steger is inconsistent on the delivery terms he now claims were included in alleged "agreement" created by our December 4, 2007 oral discussion. In one sentence he asserts that his proposed contract document with a Shipment term of "December 20th, 2007" was the delivery term we agreed to. *See* Ferguson-Steger Aff. ¶ 8.



Yet in another sentence, he says that the delivery term was just sometime “in December 2007.”  
*See* Ferguson-Steger Aff. ¶ 21.

11. However, neither inconsistent claim correctly reflects our oral discussion wherein Mr. Ferguson-Steger just advised that MIC was prepared to deliver a barge loading sometime “December 20 or later.”

12. The proposed contract also had a one-sided force majeure clause excusing MIC’s performance “for any cause beyond its reasonable control.” While it is industry custom to relieve both a buyer and seller of their obligations under a spot purchase of bulk chemicals for any cause beyond their reasonable control, it is most certainly not permissible for only one party to the transaction to have the benefit of such relief.

13. The proposed contract also contained an arbitration clause requiring arbitration in New York City for any dispute over the transaction. I never agreed to this, nor did MIC.

14. In his Affidavit, Mr. Ferguson-Steger acknowledges that I did not sign or otherwise agree to the terms of the proposed contract he transmitted to me on December 5, 2007. Instead, he says the document “contains the same material terms MIC and Interstate agreed to the day before.” *See* Ferguson-Steger Aff. at ¶ 8. As I’ve shown, that is not accurate.

15. On Thursday, December 13, 2007, Mr. Ferguson-Steger called me to say that MIC could not deliver a barge of Methanol anytime before December 24, 2007 because that was when MIC “had a vessel coming in” to MIC’s facility in St. Rose, Louisiana with Methanol.

16. The following Tuesday, December 18, 2007, I received word from Al Puntureri, President of Interstate, that OCG could not take delivery of a barge of Methanol because of a delay in receiving Coast Guard/Homeland Security approval for its new biodeisel facility on the Ohio River where the barge of Methanol was to be delivered.

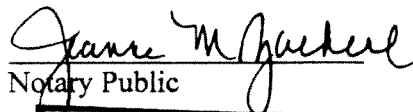
17. Mr. Puntureri instructed me to immediately inform MIC of this fact, which I did by e-mail the morning of December 18, 2007, which was just ten (10) business days after my initial oral discussion with Mr. Ferguson-Steger on December 4, 2007. My advice to Mr. Ferguson-Steger on December 18 was well before MIC loaded the barge with the Methanol it now claims "it reserved in its inventory" for Interstate. *See* Ferguson-Steger Aff. at ¶ 18. It was also a week before MIC even had the ability to deliver any Methanol to Interstate according to what Mr. Ferguson-Steger told me on December 13.

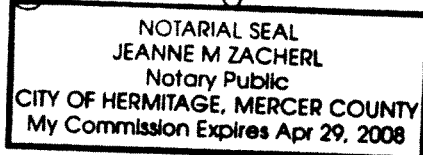
18. Based on the industry practice and my prior dealings with Mr. Ferguson-Steger, my advice to him on December 18, 2007 concerning OCG's inability to take delivery of a Methanol barge should have relieved Interstate from any obligation to pay MIC for a barge that had yet to be loaded and which was only supposed to be first loaded sometime "December 20 or later."

19. Instead, Mr. Ferguson-Steger sent me a series of e-mails that threatened to sue Interstate for purported damages. MIC then followed that threat with this lawsuit.

  
Lori Cirillo

Sworn to before me this  
11th day of April, 2008

  
Notary Public



# **Exhibit B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.  
-----

08 Civ. 00194 (JSR)(GWG)

**AFFIDAVIT**

STATE OF PENNSYLVANIA    )  
                                          ) ss.:  
COUNTY OF ALLEGHENY    )

Albert R. Puntureri, being sworn deposes and says:

1. I am the President of Interstate Chemical Corporation ("Interstate"), defendant in this action. I have personal knowledge of the facts set forth below.
2. I founded Interstate in 1968, and since that time, it has become a preeminent chemical manufacturing and distribution company.
3. During my forty (40) years in chemical procurement, I have had substantial experience in contract and "spot" business arrangements both as purchaser and seller. I also have experience in trading activity where barges of chemicals such as Methanol are either purchased from producers or broker/traders or sold to end customers or other broker/traders.
4. During my forty (40) years of experience in the industry, I have witnessed the cancellation of orders placed by both contract and "spot" customers on a regular basis either by the seller or purchaser. Such cancellations have been the result of lack of inventory, lack of

delivery equipment, force majeure, change in requirement needs, or sometimes, even no express reason at all.

5. On many occasions, Interstate has ordered bulk chemicals from suppliers who canceled the orders without reason and without recourse to Interstate.

6. It is also industry practice to include as a term in a chemical procurement transaction a broad force majeure understanding wherein both buyer and seller may cancel the order for any cause beyond their reasonable control.

7. Such cancellations are common place in the chemical industry given the dangerous nature of the products, and increased regulation in the industry. Anytime a broker or customer places an order but is unable to accept delivery for any reason beyond its reasonable control, it is industry practice to permit cancellation of the order without penalty so long as the cancellation takes place before the chemicals have been loaded onto the truck, tank car, or barge and shipped.

8. I have read the Complaint filed by plaintiff Mitsubishi International Corporation ("MIC"), and the Affidavit of its marketing manager, Zack Ferguson-Steger in support of its Motion for Summary Judgment, and believe that MIC's position is over zealous, at best, and flies in the face of industry practice.

9. On December 4, 2007, Mr. Ferguson-Steger and Interstate's Director of Chemical Procurement, Lori Cirillo, had an oral discussion wherein Ms. Cirillo inquired about the availability of a barge of Methanol for possible delivery in late December to its customer Owensboro Grain Company, LLC ("OGC"), in Owensboro, Kentucky for its new biodeisel plant on the Ohio River.

10. Following that oral discussion, Mr. Ferguson-Steger confirmed by his e-mail dated December 4, 2007 at 4:04 p.m. that MIC could deliver a barge of 10mb of Methanol at the then market price of \$2.55 per gallon “loading Dec. 20 or later.”

11. By stating that MIC could offer a barge of Methanol “loading Dec 20 or later,” MIC was only confirming that it could ultimately supply Interstate with the Methanol barge, although without a firm commitment as to when it would be available for actual shipment.

12. I understand from Ms. Cirillo that on Thursday, December 13, 2007, Mr. Ferguson-Steger called to tell her that MIC could not deliver a barge of Methanol anytime before December 24, 2007 because that was when MIC “had a vessel coming in” to MIC’s facility in St. Rose, Louisiana with Methanol.

13. The following Tuesday, December 18, 2007, I was informed by OCG that it could not take delivery of the barge of Methanol because of a delay in receiving approval from the U.S. Coast Guard and the U.S. Department of Homeland Security for its new biodeisel facility on the Ohio River where the barge of Methanol was to be delivered.

14. I immediately instructed Ms. Cirillo to inform MIC of this fact, which she did the morning of December 18, 2007, which was within ten (10) business days after her December 4, 2007 oral discussion with Mr. Ferguson-Steger.

15. Even more important, Ms. Cirillo’s advice to Ferguson-Steger was before MIC loaded the barge with the Methanol it now claims “it reserved in its inventory” for Interstate. *See* Ferguson-Steger Aff. at ¶ 18.

16. It appears from Exhibit D to its Complaint that MIC is claiming that the Methanol it purportedly “reserved in its inventory” for Interstate was sold to Tauber Petrochemical Company (“Tauber”), which is a chemical broker based in Houston, Texas.

17. That transaction reflects a sale of 10mb of Methanol for delivery sometime between December 21, 2007 and January 10, 2008. No evidence has been submitted by MIC reflecting if and when the delivery actually occurred, or where and to whom it was delivered. Indeed, based on Mr. Ferguson-Steger's advice to Mr. Cirillo on December 13, 2007, MIC was not in a position to deliver any Methanol out of St. Rose, Louisiana before Christmas.

18. Nor has MIC submitted any evidence establishing this so-called "reservation of inventory" that MIC made as a result of the December 4, 2007 communications between Ms. Cirillo and Mr. Ferguson-Steger.

19. It is my understanding that MIC is a bulk trader of chemicals and other products. With respect to Methanol, it is my understanding that MIC produces Methanol in Venezuela, and also purchases Venezuelan Methanol from importers such as Metcall LLC. MIC then stores the Methanol in its facilities for resale to brokers, distributors, and direct customers. Without submitting evidence as to MIC's purchasing and storage activity, I have no way of addressing the credibility of MIC's claimed "reservation of inventory" for Interstate. This is especially true in light of Mr. Ferguson-Steger's statement to Mr. Cirillo on December 13, 2007 that MIC was not in a position to deliver any Methanol out of St. Rose, Louisiana before December 24, 2007 because that was when they first "had a vessel coming in" with Methanol. Interstate has requested such information from MIC, which has yet to be produced.

20. In any event, based on the industry practice I explained above, OCG's inability to take delivery of the barge of Methanol should have relieved Interstate from any obligation to pay for a barge that had yet to be loaded by MIC and, that MIC had only committed to making available "December 20 or later."

21. Instead, MIC decided to sue Interstate because of its inability to take possession of a Methanol barge yet to be loaded with no place to put it. Interstate's customer OGC was unable to take possession of the barge due to the delayed Coast Guard/Homeland Security approval of its new biodiesel facility. Interstate had no other place to store the barge of Methanol.

22. MIC also now claims that it is entitled to recover from Interstate the price difference between the market price on December 4, 2007 and the price it sold a Methanol barge to Tauber.

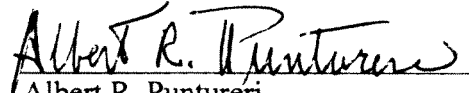
23. According to Mr. Ferguson-Steger's Affidavit, the price paid by Tauber was \$2.05 per gallon which was "the highest price [MIC] could get" and which "MIC was forced to accept." *See* Ferguson-Steger Aff. at ¶¶ 18, 19.

24. However, industry market reports reflect that the market price for a "US Spot" barge of Methanol for the last two week of December, 2007 was between \$2.52 per gallon and \$2.33 per gallon. I have attached hereto a copy of the Global Methanol Report issued by Jim Jordan & Associates ("JJ&A"), the leading market analysis and intelligence provider to the Global Methanol, Ethanol & Transportation Fuels Industries which reflect such market prices.

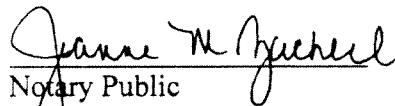
25. It is my belief that MIC and Tauber had an existing relationship, and that the price paid by Tauber for the barge in question was not at market price, but at a favorable rate in consideration for other business between the companies.

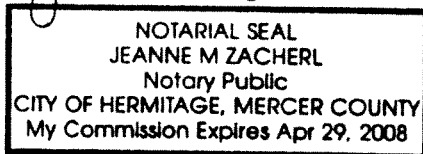


26. Despite our requests, MIC has failed to produce any documents or correspondence concerning its purported efforts to obtain a market price for a barge of Methanol on or after the morning December 18, 2007, when Ms. Cirillo informed Mr. Ferguson-Steger of Interstate's inability to take delivery of a barge.

  
Albert R. Puntureri

Sworn to before me this  
11th day of April, 2008

  
Notary Public



**JJ&A**

**Jim Jordan**  
**Marybeth Maloy Gebauer**  
**Etienne Dor**  
**Bob Starkey**  
**Dexter Miller**  
**Shameek Ghosh**

**JJ&A USA:**  
 12941 North Freeway  
 Suite 226  
 Houston, TX 77060 USA  
 Tel: 281-877-7009  
 Fax: 281-877-7267  
 www.jordan-associates.com  
 info@jordan-associates.com

**JJ&A Europe:**  
 Brussels, Belgium  
 +32 10 45 42 81  
 etienne.dor@skynet.be

### Inside This Issue -

Global production  
update & price  
snapshot 2-3

Americas update 3-5

Europe market  
update 6

Asia market update 7

US natural gas  
update 8

# Global Methanol Report

JIM JORDAN &amp; ASSOCIATES, LLP

December 21, 2007 ISSUE 239

## Global Prices

	DECEMBER			NOVEMBER		
North America	CPG	US \$/mt			CPG	US \$/mt
US Contract Index - range	245-280	815-931	↑	index range	195-205	649-682
US Contract Index - wtd avg	257.5	856	↑	index wt avg	199	662
Methanex - US MND RP	250	832	↑		200	665
SCC - US MPP	280	931	↑		205	682
US Spot GC barge						
Wk Dec 21	233.00-235.00	775-782	±/↓	Wk Nov 30	260.00-270.00	865-898
Wk Dec 14	233.00-252.00	775-838		Wk Nov 23	275.00-280.00	915-931
Wk Dec 07	245.00-260.00	815-865		Wk Nov 16	280.00-285.00	931-948
				Wk Nov 09	285.00-295.00	948-981
				Wk Nov 02	255.00-265.00	848-881
				spot wtd avg	276.6	920
Truck/Railcar terminal postings	CPG	US \$/mt			CPG	US \$/mt
FOB US GC	287.00-295.00	955-981	↑		222.00-260.00	738-865
FOB US NE	287.00-295.00	955-981	↑		222.00-240.00	738-798
FOB US SE	287.00-290.00	955-965	↑		222.00-240.00	738-798
FOB US MW	300.00-308.00	998-1024	↑		235.00-245.00	782-815
Ashland - Chicago net benchmark	suspended	suspended			237.00	788
Ashland - FOB GC net benchmark	suspended	suspended			222.00	738
SCCD - Distribution price FOB terminal	305.00	1014	↑		—	—
Methanex - W Canada distributor	CAD \$932/mt	US\$936	↑		CAD \$765/mt	US\$792
US Natural Gas		\$/MMBtu				\$/MMBtu
'Inside Ferc'	Houston Ship Channel	6.87				6.92
Nymex, front month	COB Dec 20	7.137				
Asia	CPG	US \$/mt			CPG	US \$/mt
China, CFR (notional)	132-135	440-450	↓		135-150	450-500
SE Asia, CFR (notional)	168-171	560-570	↓		162-183	540-610
Taiwan, CFR (notional)	168-171	560-570	↓		165-180	550-600
Korea, CFR (notional)	171-174	570-580	↓		168-186	560-620
Methanex AP Contract	216	720	↑		186	620
Europe	€/mt	US \$/mt			€/mt	US \$/mt
Contract - Q4 2007	380	546	↑		380	551-563
Methanex (MEPCP) Q4 2007	390	560	↑		390	566-578
Spot FOB Rdam T2, nominal	480-505	690-725	↓		500-540	725-791
Currency: \$1 USD = € 0.6961; GBP 0.504; JPY 113.97; CNY 7.3685; CAD \$0.995; BRL 1.789; MX peso 10.821						

©Copyright 2003-2007  
 Jim Jordan & Associates, LLP  
 All Rights Reserved

## US Dec Contract Postings

	cpg	\$/mt
Methanex	250.00	832
SCC	280.00	931

## US Nov Contract Postings

Methanex	200.00	665
SCC	205.00	682

## JJ&amp;A US Contract Index

Nov	199.00	662
-----	--------	-----

## US Spot - FOB GC

	cpg	\$/mt
current month	233.00-235.00	775-782

Trend: down

## Europe Spot - FOB T2

	€/mt	\$/mt
Rotterdam	480-505	690-725

Trend: down

## Europe Contract

Q4 2007	380	546
---------	-----	-----

## Methanex Posted Contract Price

Q4 2007	390	560
---------	-----	-----

## World Methanol Prices

## Asia Spot

China FOB*	530-560	\$/mt
China CFR	440-450	\$/mt
SE Asia CFR	560-570	\$/mt
Taiwan CFR	560-570	\$/mt
Korea CFR	570-580	\$/mt

Trend: downward pressure

\* Not all China FOB export product meets IMPCA specifications

## Methanex A-P Contract

December	720	\$/mt
November	620	\$/mt

## India - CFR WC

	cpg	\$/mt
	165-171	550-570

## Global Production Update

## Americas

In **Chile**, 3 plants totalling about 3 million MT per were down from early June through November due to natural gas constraints. Through November, we estimate that Chile volume lost this year exceeds 1.4 million metric tons. There is no speculation on how much gas will be available and how soon from Chile. Nothing has changed with the Argentina situation, but hopes for any significant gas from that country anytime soon appear to be fading.

## Europe/Middle East/Africa

In the **Netherlands**, the BioMCN unit has rescheduled its 5-7 day shutdown for some bio-unit tie-in work to early next year.

In the **Middle East** and **Africa**, a number of planned outages have been delayed. The Atlantic Methanol plant in Equatorial Guinea has delayed its planned outage of approximately 10 days to some time in the 1st quarter of 2008. The outage will include the installation of a new compressor which is expected to increase capacity from approximately 1 million MT/year to 1.15 million.

In **Algeria**, the ENIP Arzew plant (120kTpa) suffered an explosion earlier in November and force majeure conditions were declared. Production is planned to be restarted end-December/early January.

## Asia

The 600 KTA methanol plant at Hainan Island in **China** experienced an unexpected shutdown in early November. It is expected to restart late December or early January. In **Indonesia**, KMI has postponed its planned November outage of the 660 KTA plant until January 7th when the plant will be taken down for a planned 3 weeks.



## Global Snapshot

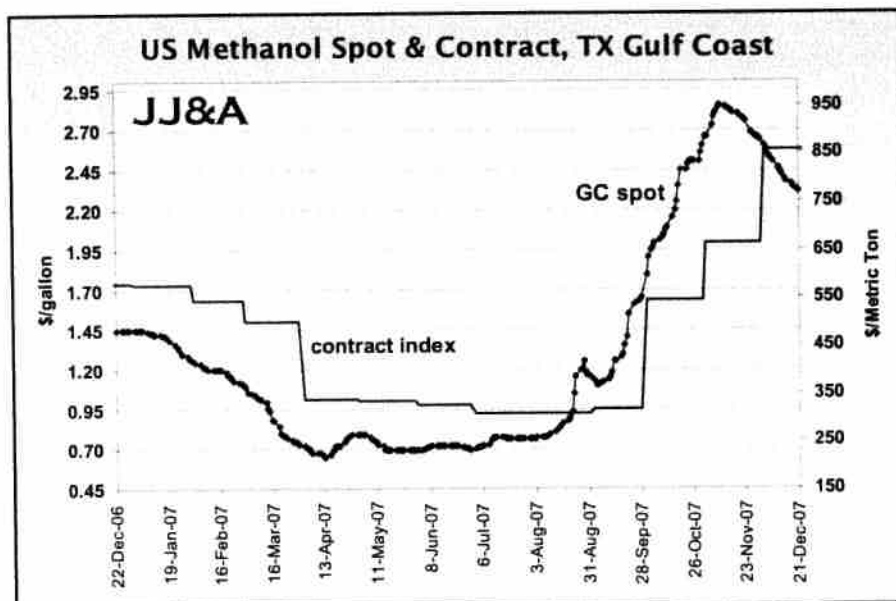
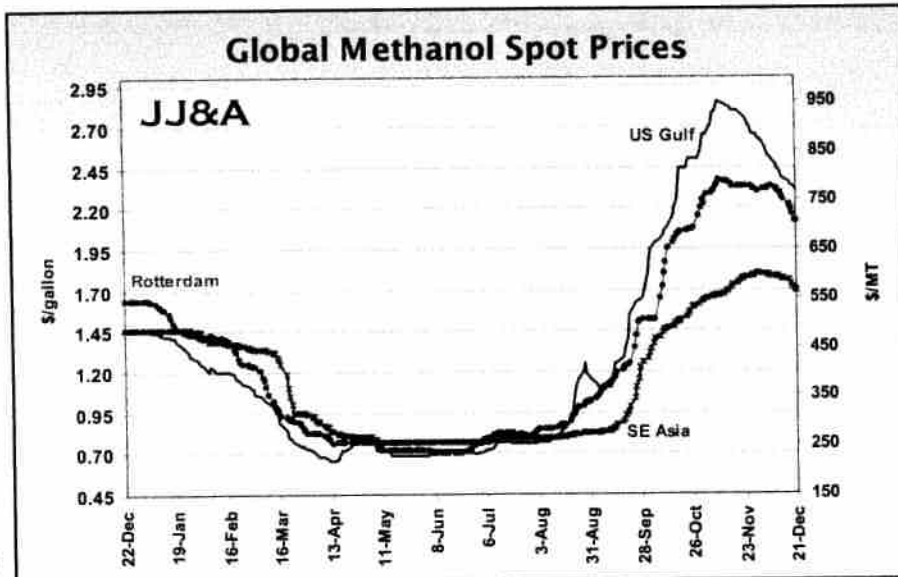
Things heated up in **Europe** this week as many consumers began insisting that the Q1 contract be settled at a number below the €500/MT level. In support of this position, one major consumer/producer made numerous spot sales at €480/MT in a market that most observers believed was above €500/MT. Ultimately, it appears that buyers prevailed with several consumers agreeing with one producer at €490 and at least one other producer accepting that level. More details on this situation will be discussed in the Europe market section of this report.

The **US** market was very quiet this week in the pre-holiday period. Many market players were more focused on holiday activities than the market and the period from now through January 1st most likely will be very dull with more focus celebrating the Holidays. As many had anticipated, Methanex notified customers on Wednesday, that the company is rolling its Methanex Non-discounted Reference Price (MNDRP) at 250 cpg (\$831.50/MT) for January. Thus far, Southern Chemical has not notified the market of their intentions. The direction of spot pricing is down although the market was relatively quiet this week.

In **Asia**, markets were quiet this week, but sentiment is down as buyers say spot methanol is becoming more available at prices that continue to favor buyers. Most markets saw spot prices erode this week between \$10 and \$20/MT.

## North America Update

We completed our calculation for the December contract index price this week. The range was quite wide, with sellers reporting numbers as low as 245 cpg (\$815/MT) up to the high end of 280 cpg (\$931/MT). Our weighted average for the month is 257.5 cpg (\$856 per MT) up a sizeable 58.5 cpg (\$195 per MT) from November. Spreads such as we see this month can create multiple problems for buyers and sellers. Newsletter indexes are likely to be wide ranging. Our index is well above some posted prices. Others likely will be as well. Will 'meet competition clauses' be imposed? Will contracts that are indexed have to be modified or at least exceptions granted? These are confusing times and when producers see the market so differently, it does create unusual circumstances.

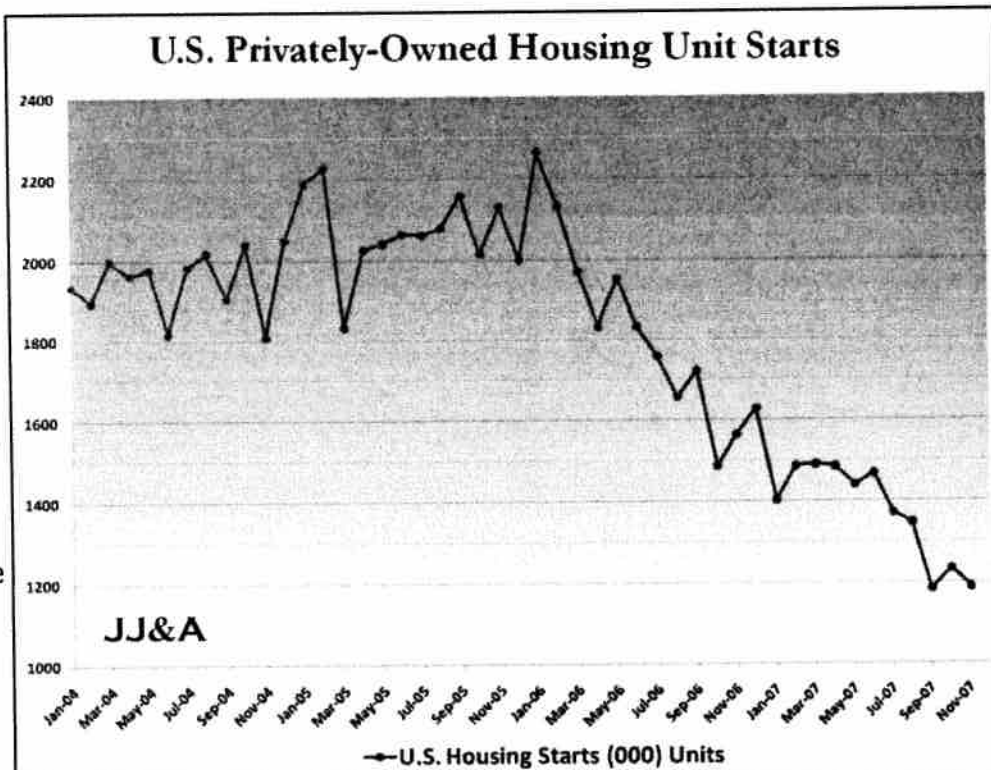




*North America Update, continued*

The US market showed further signs of softness this week and consumers continue to comment that they believe the worst is over. Most were not at all surprised that Methanex held the MNDP at 250 cpg for January, but most consumers believe that future months will see declining prices. The Southern Chemical price for December is 280 cpg (\$931/MT). Southern commented they will announce their price ideas for January next week. News that the European market appears headed for a €490 (214 cpg) settlement for Q1 will have US buyers pressing hard for prices that do not put them at a competitive disadvantage with their competitors in Europe. There is no way producers will drop US prices that much for January, but later in the quarter, the pressure will be on from consumers.

The continuing demise of the housing industry cannot be ignored as a possible precursor to recession in the US. Housing starts for single family homes are at the lowest level in 16 years. Starts in November were down 24 percent from November of last year. This is getting very serious. While the numbers of starts do not tell the entire story, they cannot be ignored. The average home size is going up and homes today contain more formaldehyde resins based products than in the early 1990's so fewer homes contain more formaldehyde, but the magnitude of the decline still has an almost unprecedented impact on those formaldehyde and acetic acid based products that go into the housing industry. At this stage, it is questionable that the Fed can do much more to turn the situation around. Interest rates are certainly low enough that financing should not be a problem, but it is becoming more difficult to qualify for loans since many lenders have lost billions of dollars due to default on sub-prime loans that are coming due and decimating not only the lenders, but the homeowners that cannot afford to make the new (increased) payment amounts.



At this stage, it is questionable that the Fed can do much more to turn the situation around. Interest rates are certainly low enough that financing should not be a problem, but it is becoming more difficult to qualify for loans since many lenders have lost billions of dollars due to default on sub-prime loans that are coming due and decimating not only the lenders, but the homeowners that cannot afford to make the new (increased) payment amounts.

The methanol **spot** market was relatively quiet in the typical pre-Christmas/New Year holiday lull—but there was a steady flow of business conducted behind the scenes. Most of the attention was focused on January trading, although some residual December business was conducted as well. December prices generally consolidated towards the low end of last week's trading range, with general bid/ask ideas near 230/235 cpg (\$765/782 per MT) for most of the week—although a few players were still holding selling offers as high as 240 cpg (\$798). Firm selling offers in the low 230's failed to attract buying interest for most of the week. Light trade was confirmed within the aforementioned 230-235 cpg range on a private and confidential basis.

January spot prices were in a much wider range this week, as price ideas began to slip rather sharply week-on-week. Early in the week, bid/ask ideas were in a range of 210-220 cpg (\$698-732), and several p+c deals were confirmed within this range. Sub-210 cpg January business was reported later in the week.



## US Methanol Imports

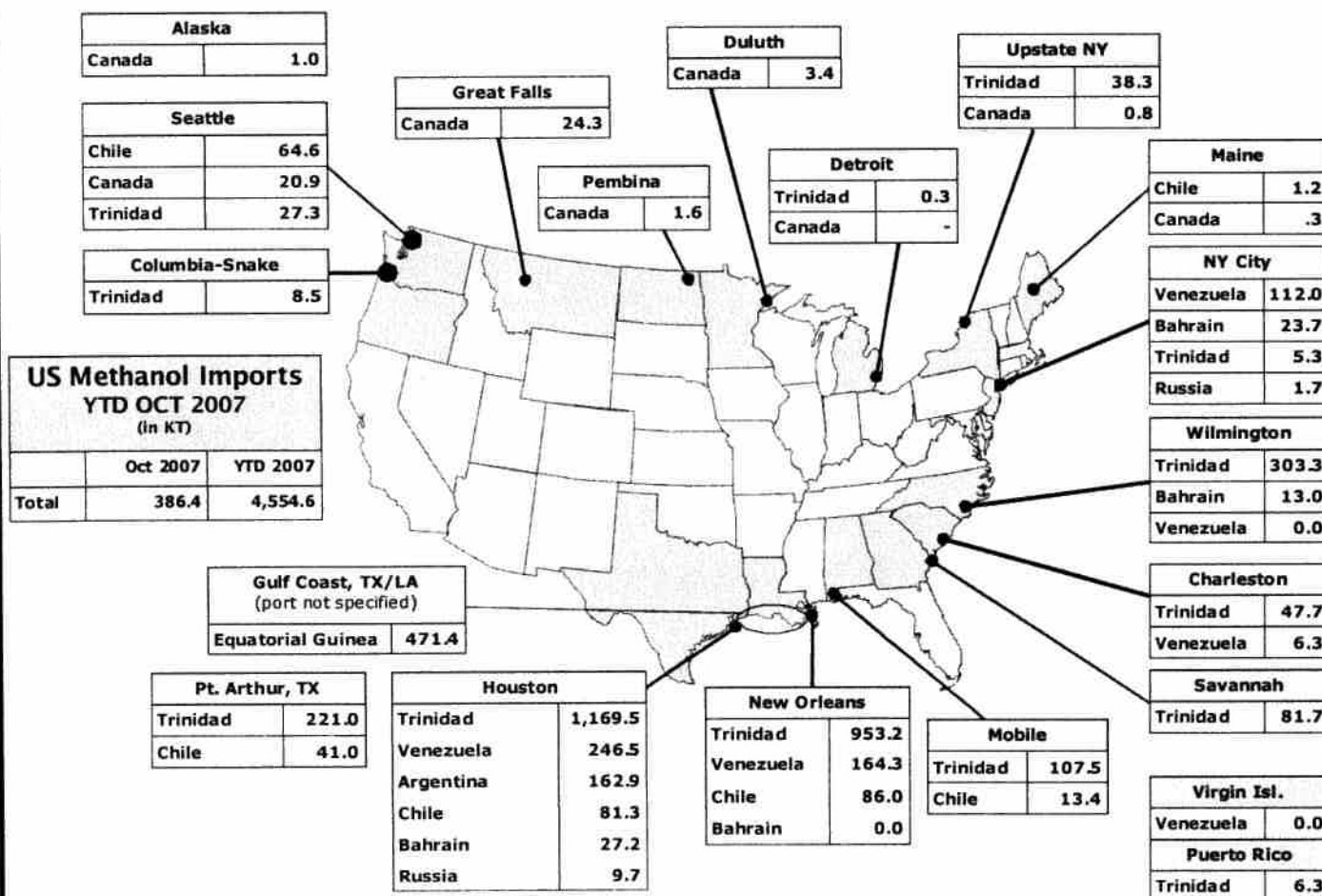
The latest trade data for October was released this week by the US Census Bureau. As shown in the map below, we see the first shipment of methanol into the Columbia-Snake River Region of the Pacific Northwest (the result of the closure of Canadian methanol production).

### United States Methanol Trade 2007

#### IMPORTS in MT

Country	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	YTD 2007	YTD 2006
Trinidad	285,340	411,240	330,278	261,422	262,968	344,810	224,200	367,864	232,240	250,183			2,970,545	3,493,821
Venezuela	51,209	64,485	32,473	74,421	36,242	52,928	71,707	49,423	53,772	42,661			529,321	935,565
Eq. Guinea*	82,000	-	40,242	28,351	72,197	31,190	40,723	76,395	40,742	59,581			471,421	259,480
Chile	40,301	152	121	76,047	40,071	87,456	18,341	21,307	3,988	142			287,926	119,321
Argentina	33,295	-	41,648	15,227	24,464	11,848	-	4,721	-	31,736			162,939	178,209
Bahrain	-	5,246	14,989	5,318	9,995	10,057	12,304	6,095	-	-			64,004	54,980
Canada	15,215	13,181	10,927	11,540	1,266	11	-	85	33	229			52,487	306,970
Russia	-	-	-	-	-	-	-	-	11,450	-			11,450	51,109
China	-	92	106	67	330	57	359	193	441	1,751			3,396	-
Other	511	-	-	114	128	7	23	123	117	120			1,143	-
<b>TOTAL</b>	<b>507,871</b>	<b>494,396</b>	<b>470,678</b>	<b>472,507</b>	<b>447,661</b>	<b>538,364</b>	<b>367,657</b>	<b>526,206</b>	<b>342,783</b>	<b>386,403</b>			<b>4,554,632</b>	<b>5,399,455</b>

### US Methanol Imports - YTD OCT 2007





## Europe Methanol Update

It was quite an interesting week on the European methanol scene. While the public positions of the various players did not demonstrate a lot of flexibility, negotiations seemingly blocked and opinions irreconcilable, behind the scene discussions and analyses showed no lack of determination and/or tactical creativity.

Producers' opinions bravely stuck behind their interpretation of the S/D situation, best summarised by "... improving but still dangerously stretched..." while consumers increasingly pointed to eroding spot prices in all regions to back their claims for a contract price that by "all means" would have to be below €500 FOB Rotterdam.

Producers' opinions bravely stuck behind their interpretation of the S/D situation, best summarised by "... improving but still dangerously stretched..." while consumers increasingly pointed to eroding spot prices in all regions to back their claims for a contract price that by "all means" would have to be below €500 FOB Rotterdam.

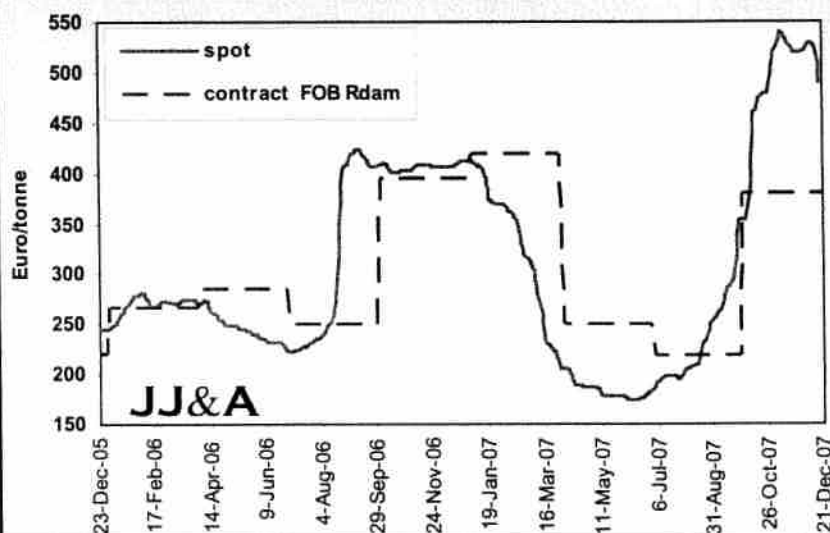
Spot transactions recorded during the week indeed showed price erosion ... but were also the subject of lots of criticism by many players as to their "validity". A December shipment was done at €505 FOB R'Dam and Jan/Feb transactions were done at €480 FOB. These transactions are confirmed, the buyers include consumer(s), producer(s) and the sellers are multiple: they fully qualify under the usual criteria for spot "postings", but are essentially the result of an unprecedented move by methanol consumer(s). Discouraged to consume high-priced methanol into the derivate sector, a consumer decided to offer unneeded product on the spot market. While the quantities are not negligible, it is not enough to solve the structural S/D shortfalls. But these sales did influence the spot market which "otherwise" had been stable in the €520-525 range. If not accepted by all, many players were advocating that in essence this is "tactically" no different than producers buying, or "drying-up" the spot market to "achieve their goals". We can only say that **in both** cases we are far from the usual understanding of market operations where sellers **always** sell with the objective to MAXIMISE the price and buyers **always** buy to MINIMISE the price and both players negotiating within these rules (no different treatment depending on who the buyer/seller is).

Resulting from the above, the contract negotiations suddenly accelerated during the last days prior to the Christmas holidays. On Thursday, a major consumer publicly stated his frustration about the ongoing deadlock and threatened to harden his position if no solution could be found before January. On Friday morning Methanex announced their intention to post their MEPCP for Q1 at €525 FOB Rotterdam, below the publicly announced levels, but "around" what was understood to be the "negotiable position" of EQCP producers.

To many players it came as a surprise, but mid-Friday the announcements came out that agreements had been reached between several buyers and a producer for a Q1 EQCP at €490 (\$712/MT) FOB Rotterdam. This was subsequently followed by more buyers and at least one more producer. Other producers preferred to "digest" the news before making their position known (but it will be difficult to generate another consensual number).

Similarly, Methanex has decided not to officially post a MEPCP before having had the time to make a full analysis of the market and will communicate with its customers within the next few days. If many are relieved by the fact that the holiday season can now really start, some will not be celebrating without some heartburn. The €490 contract number is clearly below what most producers anticipated, and we must say, also below what many consumers anticipated just 2-3 weeks ago.

## Europe Methanol Prices





## Asia Methanol Update

Consumers in Asia seem to be winning the waiting game as spot prices continued a steady downward trend again this week. Price ideas across the entire region softened this week as China sellers continued lowering their offers to attract buyers in Korea and elsewhere. News that multiple spot deals were getting done in Europe at €480 (\$690/MT) encouraged buyers that global prices were declining and few bids were heard—and those that were bidding were only looking for “deals”. Offers near the levels of last week received no interest whatsoever.

In **Southeast Asia**, no deals were reported, but sentiment was clearly down as most market participants were winding down for the holidays. Regional sellers continue to comment that the market is delicately balanced to short, but concede that buyers are no longer interested in spot numbers above the \$550-\$560 level. Most are covered on term contracts and closely watching inventories at year-end with the expectation that prices will fall further during the first quarter of next year. **Taiwan** was similarly quiet this week as no bids were heard and offers from China at numbers that would net \$560-\$565/MT on an FOB basis had no interest for consumers.

Buyers in **Korea** remained on the sidelines, expressing no interest in China offers of \$540-\$560 FOB China. Korea buyers are speculating that the Methanex contract price announcement for January will be down, in recognition of declining spot values and falling prices in China. **India** prices are nominally lower with little activity heard. Buyers appear to be adequately covered with contract volumes and prices continue under downward pressure with offers for export heard at around \$550/MT FOB, but no buyers stepped forward as prices in Europe and the US continue to experience downward pressure. No buyer wants to commit at current prices, not knowing how far prices could fall before arrival at a potential customer location. Buyers are not interested in a declining market.

In **China** this week, it is more of the same. Local prices continue to fall with weak demand and export opportunities declining. There were some mixed signals this week as local prices were placed in a very wide range, between CNY 3300 and 3500, depending on the source. There is clearly some confusion and price ideas are quite different depending on the source and which day of the week. However, the trend is down and with the Lunar New Year holidays looming, sellers are hoping for a resurgence within the next 2 weeks; but buyers seem very scarce with demand still quite sluggish. Offers for export continue to be heard between \$530 and \$560 FOB and while some export sales are quietly being concluded, some sellers are concerned that when the Hainan Island plant re-starts (planned early January), there will be additional downward pressure on prices.

## JJ&A Holiday Publishing Schedule

JJ&A's offices will be closed December 24, 2007 through January 1, 2008. We will not be publishing a Global Methanol Report the week of December 24th in observation of the Holiday Season.

Our warmest thoughts and best wishes for a wonderful Holiday and Happy New Year.



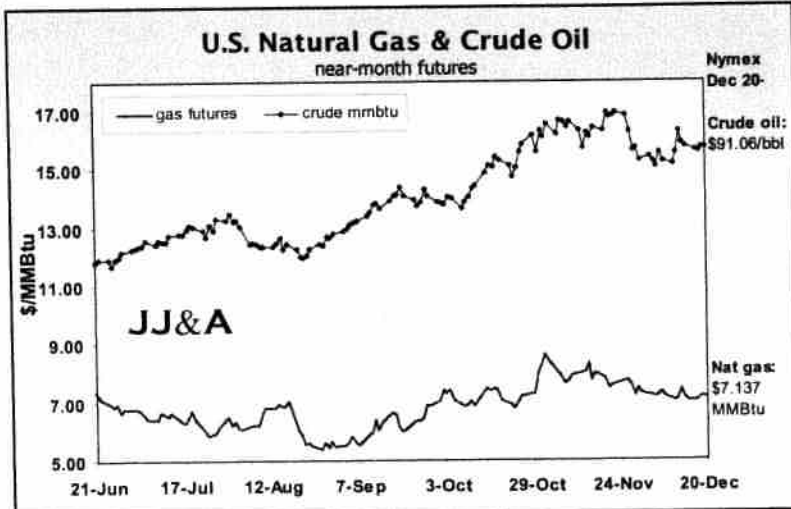
## Natural Gas Snapshot

Near-month futures prices were relatively steady this week. Since moving into front month position at the end of November, the January natural gas futures contract on the NYMEX has traded in an average range either side of \$7.00-7.40 per MMBtu. The January futures contract closed the report week Thursday at \$7.137 per MMBtu, posting a week-on-week decline of \$0.056 per MMBtu.

The 12-month natural gas futures strip on the NYMEX (Jan 2008 — Dec 2008) closed the week Thursday at \$7.588, posting a very slight week-on-week decrease of \$0.016. At \$7.588, the 12-month strip was trading at a premium of \$0.408 to the Henry Hub spot price. The lowest priced contract over the next 12 months is the near-month January 2008 contract, which closed the week at \$7.137 per MMBtu, as noted above. The highest priced contract over the next 12 months is the December 2008 contract, which closed the week at \$8.541 per MMBtu. The average futures strip price for the remaining winter heating season contracts (Jan 2008 - March 2008) was \$7.215 per MMBtu, which is down from the week-ago level of \$7.284 per MMBtu.

Henry Hub spot prices were fairly steady this week, trading in a relatively narrow range. The average Henry Hub spot price closed the week at \$7.18, which was down \$0.21 per MMBtu from last week's close.

The U.S. EIA's latest storage report for the week ending December 14th showed a 121 Bcf net withdrawal from underground storage, which was below average expectations for a 133 Bcf withdrawal. Total gas in storage is now reported at 3,173 Bcf. According to EIA data, this week's 121 Bcf withdrawal compares with the 5 year average net withdrawal of 128 Bcf and the year-ago net withdrawal of 85 Bcf for the same report week. The current level of gas in U.S. storage is now 4 Bcf (0.1 percent) less than last year's level of 3,177 and 266 Bcf (9.2 percent) above the 5-year average inventory level of 2,907 Bcf for the report week.



## U.S. Natural Gas Prices

Benchmark	Dec 14	Dec 17	Dec 18	Dec 19	Dec 20
Henry Hub cash	7.09	7.07	7.16	7.18	7.18
Jan futures contract	7.025	7.035	7.141	7.179	7.137
Feb futures contract	7.153	7.176	7.278	7.299	7.237
<b>'Inside FERC' - Dec</b>					
Houston Ship Channel	6.87				
Henry Hub	7.21				
Chicago city-gates	7.78				
U.S. national average	6.87				
*TCPL Alberta, AECC-C#	6.21				

Natural Gas Prices in US \$/MMBtu  
\*TCPL Alberta, AECC-C# prices are in Canadian\$/GJ

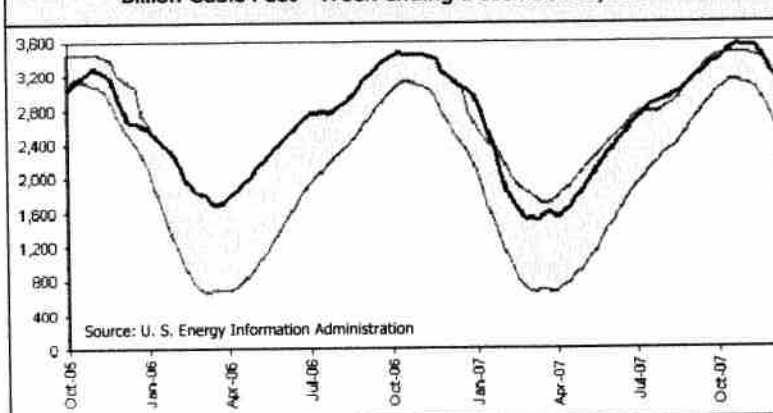
## U.S. EIA Energy Price Outlook

	Year			
<i>forecast as of Nov 2007</i>	2005	2006	2007	2008
Crude oil; WTI, \$/bbl	56.49	66.02	71.36	80.00
Natural gas; Henry Hub, \$/mcf	9.00	6.90	7.30	8.01

JJ&amp;A

## U.S. Natural Gas In Underground Storage

Billion Cubic Feet - Week ending December 14, 2007



# **Exhibit C**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.  
-----

08 Civ. 00194 (JSR)(GWG)

**AFFIDAVIT**

STATE OF KENTUCKY )

) ss.:

COUNTY OF DAVIES )

Mark Carlisle, being sworn deposes and says:

1. I am the Vice President of Operations for the Owensboro Grain Company, LLC ("OGC"). I have personal knowledge of the facts set forth below.

2. OGC produces edible oils and soy products at its headquarters near the Ohio River in western Kentucky.

3. In or about November, 2007, OGC began commissioning its new biodiesel plant. The new biodiesel plant will have a capacity of some 50 million gallons of yearly biodiesel, and is one of the largest biodiesel plants in the entire continental United States.

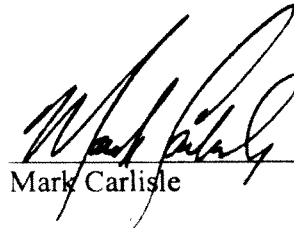
4. At that time, it was our intention to order a barge of methanol for use in the biodiesel plant.

5. Given the size of the plant and its location on the Ohio River, before we could accept delivery of a barge of methanol at the plant, OGC needed to obtain approvals from the United States Coast Guard and from the United States Department of Homeland Security. OGC

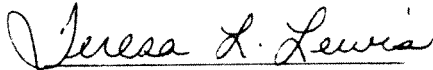
had previously submitted its Operations Manual and newly developed Security Plan to the Coast Guard.

6. Although OGC had anticipated such approvals to be received by the end of 2007, to date, such approvals have not been received. As of today's date, the United States Coast Guard is still reviewing the Security Plan and considering Homeland Security issues that still prevents OGC from receiving methanol by barge at the plant.

7. I understand that Interstate Chemical Company ("Interstate") placed an order with Mitsubishi International Corporation ("Mitsubishi") for a methanol barge to be delivered to us at the end of December, 2007. However, due to the delays in receiving approvals from the United States Coast Guard and the United States Department of Homeland Security, OGC was unable to receive that barge, and is still unable to receive it today.

  
Mark Carlisle

Sworn to before me this  
10<sup>th</sup> day of April, 2008

  
Teresa L. Lewis  
Notary Public

# **Exhibit D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.

08 Civ. 00194 (JSR)(GWG)

**DEFENDANT'S FIRST SET  
OF DOCUMENT REQUESTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, defendant Interstate Chemical Corporation ("Interstate") demands that plaintiff Mitsubishi International Corporation ("Mitsubishi") produce for inspection, examination and copying the following documents and tangible things at the offices of Simon Lesser PC, 420 Lexington Avenue, New York, New York 10170, or such other location as the parties may designate, within thirty (30) days from the date of service hereof.

**RULES OF CONSTRUCTION**

1. These document requests are to be regarded as continuing to the extent set forth in Rule 26(e) of the Federal Rules of Civil Procedure, and Mitsubishi is required to provide supplementary responses in accordance with that Rule within ten (10) days of obtaining or becoming aware of additional information pertaining to these document requests.

2. "Mitsubishi," "Plaintiff," and "you" means the plaintiff in this action, including all of its parents, affiliates, subsidiaries, officers, directors, employees, agents, and representatives.



3. Mitsubishi is required in responding to these document requests to obtain and furnish all information that is in its possession or under its control, or in the possession or the control of any of its representatives, employees, agents, servants or attorneys.

4. If any of the documents requested below are withheld under a claim of a privileged communication, you are requested for each such document withheld, to state that you are claiming a privilege thereof and the ground(s) on which said privilege rests, and to identify the document for which the privilege is claimed by specifying:

- (a) its title or other identifying data;
- (b) the identity of the author thereof, the parties thereto, and any person who assisted in its preparation;
- (c) the date of the document or if no date appears thereon, the approximate date;
- (d) the exact nature and substance of the document;
- (e) the identity of each person having possession, care, custody, or control of the original and any copies thereof; and
- (f) the identity of each person to whom the document's contents were disclosed.

5. If any documents requested herein were, but no longer are in Mitsubishi's possession or subject to Mitsubishi's control, identify such documents and state what disposition was made of such documents.

6. If any documents requested herein have been destroyed, or otherwise discarded, you are requested for each such document to state the reason for its destruction or

discard, identify the person(s) who authorized such destruction or discard, and identify the document by specifying:

- (a) its title or other identifying data;
- (b) the identity of the author thereof, the parties thereto, and any person who assisted in its preparation;
- (c) the date of the document or if no date appears thereon, the approximate date;
- (d) the exact nature and substance of the document;
- (e) the identity of each person who had possession, care, custody, or control of the original and any copies thereof; and
- (f) the identity of each person to whom the document's contents were disclosed.

7. If any information or data is withheld because such information is stored only electronically, Mitsubishi shall identify such information by the subject matter of the information or data, the storage mode, and the place or places where such information is maintained.

8. Each document request which seeks information relating in any way to communications to, from or within a business and/or corporate entity, is hereby designated to mean, and should be construed to include, all communications by and between representatives, employees, agents and/or servants of the business and/or corporate entity.

9. No answer is to be left blank. If the response to the document request in none or unknown, the words "none" or "unknown" must be written and supplied as the



response. If the response to a document request is inapplicable, “n/a” must be written and supplied as the response.

10. Unless expressly indicated otherwise, the time period covered by these document requests is January 1, 2004 through the trial of this action.

### **DEFINITIONS**

Interstate adopts, and Mitsubishi is directed to observe the uniform definitions for discovery requests set forth in subparagraphs (c) and (d) of Rule 47 of the Joint Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York, in addition to the following definitions which are applicable to these document requests.

### **DOCUMENT REQUESTS**

1. All documents concerning the “agreement” as alleged in the Complaint.
2. All documents concerning any and all communications concerning the “agreement” as alleged in the Complaint.
3. All written communications between Mitsubishi and Interstate.
4. All documents concerning any and communications between Mitsubishi and Interstate.
5. All documents concerning any and all transactions between Mitsubishi and Interstate prior to December 4, 2007.
6. All documents concerning the allegation in ¶ 20 of the Complaint that “MIC was willing and able to deliver the methanol to Interstate. . . .”
7. All documents evidencing the “prompt efforts to mitigate” as alleged in ¶ 21 of the Complaint.

8. All written communications between Mitsubishi and Tauber Petrochemical Company since January 1, 2006.

9. All documents concerning any and communications between Mitsubishi and Tauber Petrochemical Company since January 1, 2006.

10. All documents concerning any and all transactions between Mitsubishi and Tauber Petrochemical Company since January 1, 2006.

11. All documents concerning the price Mitsubishi paid for the Methanol it allegedly sold at \$2.05 per gallon as alleged ¶ 27 of the Complaint.

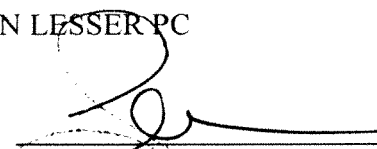
12. All documents concerning the allegation in ¶ 26 of the Complaint that “in reliance upon Interstate’s promise, MIC reserved the barge of methanol in its inventory,” including but not limited to any and all documents evidencing such “reservation.”

13. All documents, to the extent not produced in response to the foregoing Requests, that Mitsubishi will rely upon to support its claims or to rebut Interstate’s Affirmative Defenses.

Dated: New York, New York  
March 19, 2008

SIMON LESSER PC

By:

  
Leonard F. Lesser, Esq. (LL-4054)  
420 Lexington Avenue  
New York, New York 10170  
t: 212.599.5455  
f: 212.599.5459  
Attorneys for defendant Interstate Chemical Corporation

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.  
-----

08 Civ. 00194 (JSR)(GWG)

**NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE that pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure, defendant Interstate Chemical Corporation ("Interstate") will conduct the deposition of plaintiff Mitsubishi International Corporation ("Mitsubishi"), by one or more of its officers, directors, managing agents, employees or other persons whom it shall designate pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure as having the most knowledge concerning the matters set forth in Schedule A annexed hereto.

The deposition will commence on April 30, 2008, beginning at 9:30 a.m. and continue from day to day until completed. The deposition will be stenographically recorded. The deposition will take place at the offices of Simon Lesser PC, 420 Lexington Avenue, New York, New York 10170. In addition, Mitsubishi is requested to provide the undersigned counsel, at least five (5) days before the deposition, with a written designation of the names and positions of each designee who will testify on behalf of Mitsubishi, and the subject matter categories set forth in Schedule A as to which each designee will testify.

You are invited to attend and cross-examine.

Dated: New York, New York  
March 19, 2008

SIMON LESSER PC

By: 

Leonard F. Lesser, Esq.

420 Lexington Avenue  
New York, New York 10170

t: 212.599.5455

f: 212.599.5459

Attorneys for defendant Interstate Chemical  
Corporation

**SCHEDULE A**

**SUBJECTS OF INQUIRY**

1. The documents produced in response to Interstate's First Set of Document Requests, dated March 19, 2008.
2. The allegations contained in the Complaint.
3. All transactions between Mitsubishi and Interstate.
4. All transactions between Mitsubishi and Tauber Petrochemical Corporation.
5. The price Mitsubishi paid for the methanol it sold at \$2.05 per gallon as alleged in ¶ 27 of the Complaint.

# **Exhibit E**

Daniel J. Kornstein (DK - 3264)  
KORNSTEIN VEISZ WEXLER & POLLARD, LLP  
757 Third Avenue  
New York, New York 10017  
(212) 418-8600

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MITSUBISHI INTERNATIONAL CORPORATION,  
:  
Plaintiff,  
:  
-against-  
:  
INTERSTATE CHEMICAL CORPORATION,  
:  
Defendant.  
-----X

08 CV 00194 (JSR) (GWG)

**PLAINTIFF'S INITIAL  
DISCLOSURES PURSUANT  
TO RULE 26(a)(1)**

ECF Case

In accordance with Rule 26(a)(1), Fed. R. Civ. P., plaintiff Mitsubishi International Corporation makes the following initial disclosures:

A. Name, address, and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, including subjects of the information:

- i. Zack Ferguson-Steger  
Mitsubishi International Corporation  
655 Third Avenue  
New York, New York 10017  
(212) 605-2000

Mr. Ferguson-Steger has knowledge of the circumstances surrounding the negotiation and confirmation of the agreement between Mitsubishi International Corporation and Interstate Chemical Corporation for the sale of a barge of methanol that is the subject of the complaint in this action, as well as Interstate Chemical Corporation's refusal to perform that agreement.

- ii. Lori Cirillo  
Interstate Chemical Corporation  
2797 Freedland Road

Hermitage, Pennsylvania 16148  
(724) 981-3771

Ms. Cirillo has knowledge of the circumstances surrounding the negotiation and confirmation of the agreement between Mitsubishi International Corporation and Interstate Chemical Corporation for the sale of a barge of methanol that is the subject of the complaint in this action, as well as Interstate Chemical Corporation's refusal to perform that agreement.

- B. Description by category and location of all documents, data compilations, and tangible things in possession, custody, or control of the party that the party may use to support its claims or defenses:

Plaintiff has in its possession, custody or control the following documents:

- Documents regarding the negotiation and confirmation of the agreement between Mitsubishi International Corporation and Interstate Chemical Corporation for the sale of a barge of methanol that is the subject of the complaint in this action.
- Documents detailing Interstate Chemical Corporation's refusal to perform the agreement that is the subject of the complaint in this action.
- Documents detailing Mitsubishi International Corporation's attempts to mitigate the damages caused by Interstate Chemical Corporation's breach of the agreement.
- Documents setting forth the spot price for methanol during the dates relevant to the action.

- C. Computation of any category of damages claimed by the disclosing party:

Mitsubishi International Corporation has been damaged by defendant's breach in the amount of at least \$210,000 plus interest. This reflects the difference



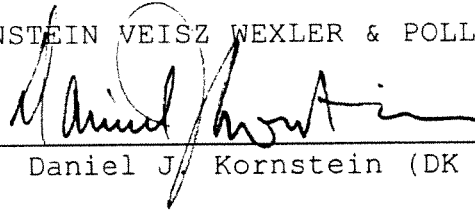
between the purchase price of methanol agreed upon by the parties (420,000 gallons of methanol at \$2.55 per gallon, or \$1,071,000.00) and the price Mitsubishi International Corporation received on the spot market when it was forced to sell the barge of methanol it had been reserving for defendant in order to mitigate its damages (420,000 gallons of methanol at \$2.05 per gallon, or \$861,000).

- D. Any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment:

On information and belief, there are no relevant insurance agreements.

Dated: New York, New York  
March 19, 2008

KORNSTEIN VEISZ WEXLER & POLLARD, LLP



By: Daniel J. Kornstein (DK - 3264)

757 Third Avenue  
New York, New York 10017  
(212) 418-8600

Attorneys for Plaintiff  
Mitsubishi International Corporation

TO: Leonard F. Lesser, Esq.  
SIMON LESSER PC  
420 Lexington Avenue  
New York, New York 10170  
Attorneys for Defendant  
Interstate Chemical Corporation

# **Exhibit F**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.

08 Civ. 00194 (JSR)(GWG)

**AFFIDAVIT**

STATE OF OHIO                     )  
                                          ) ss.:  
COUNTY OF CUYAHOGA         )

Rich Jukiewicz, being sworn deposes and says:

1. I am a Senior Purchasing Agent for Research Organics, Inc. ("Research Organics").

I have personal knowledge of the facts set forth below.

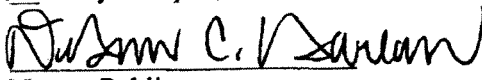
2. Research Organics is a primary manufacturer and leading worldwide supplier of high purity biochemicals for use in molecular biology, diagnostics, cell culture, pharmaceuticals, biopharmaceuticals, life sciences and biotechnology.

3. I have been involved as a commercial purchaser of chemical products for forty (40) years.

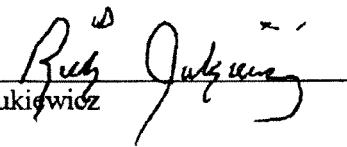
4. It is industry practice that purchase orders for chemicals be cancelled or changed on a frequent basis. Such cancellations frequently occur when end customers cancel their orders with us, causing a domino effect of having to cancel the order for material from our supplier and the end user is now unavailable.

5. It is also industry practice for purchase orders to be cancelled as a result of *force majeure*, such as when the end customer is unable to take the material as a result of government intervention, transportation issues, weather related issues, and other events that are beyond our control.

Sworn to before me this  
10<sup>th</sup> day of April, 2008

  
Notary Public

DIANN C. HARLAN  
NOTARY PUBLIC-STATE OF OHIO  
MY COMMISSION EXPIRES 7/2/11

  
Rich Jukiewicz

# **Exhibit G**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.  
-----

08 Civ. 00194 (JSR)(GWG)

**AFFIDAVIT**

STATE OF TEXAS            )  
                                  ) ss,:  
COUNTY OF HARRIS        )

Edward Swinderman says:

1. I am currently an independent contract in the Chemical Trading Industry. I have personal knowledge of the facts set forth below.
2. Previous to this and other entities, I retired in 2003 as the Methanol Business Manager for Lyondell Chemical.
3. Previous assignments with ARCO Chemical and Oxirane Chemical included numerous duties in marketing and production.
4. During my 25 years of commercial experience with the firms mentioned above, I have experience in contract and or spot business arrangements with numerous customers.
5. I also have experience in trading activity where barges of chemicals were either purchased from producers or broker/trader or sold to end user customers or other broker/traders.
6. In my years of experience, I have witnessed cancellations of orders that

have been placed by both contract and spot customers on a regular basis.

7. There cancellations have been as a result of

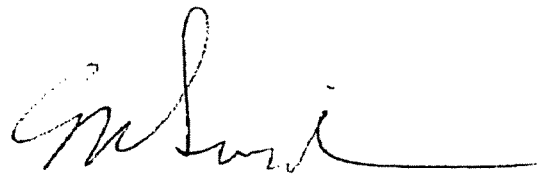
- A: lack of inventory
- B: lack of equipment
- C: force majeure
- D: change in requirement need
- E: no reason at all

Each of these cancellations that are commonplace in the Chemical Industry and most have occurred without penalty.

8. If a truck, tank car or barge is already loaded and shipped, then on occasion there is a charge for diverting the loaded equipment to another buyer. Usually the freight differential that would be charged for the change of destination.

9. Anytime a prospect or customer places an order and is unable to receive the material, for whatever reason, it is no uncommon practice to allow the cancellation without penalty to maintain good customer relations.

I declare under penalty of perjury that the foregoing is true and correct.



Edward Swinderman

4/14/08

Index No.: 08 Civ. 00194 (JSR)(GWG)  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Year 2008

-----X  
MITSUBISHI INTERNATIONAL CORPORATION,  
Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,  
Defendant.

---

**DEFENDANT'S LOCAL RULE 56.1(b) STATEMENT  
IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

---

**SIMON LESSER PC**  
Attorneys for Defendant  
INTERSTATE CHEMICAL CORPORATION  
Office and Post Office Address  
**420 LEXINGTON AVENUE, SUITE 345-6**  
**NEW YORK, NEW YORK 10170**  
**(212) 599-5455**

---

**ATTORNEY'S CERTIFICATION**

STATE OF NEW YORK, COUNTY OF

The undersigned, an attorney admitted to practice in the State of New York, does hereby certify, pursuant to Section 2105 CPLR, that I have compared the within with the original and have found it to be a true and complete copy thereof.

Dated: 20

**NOTICE OF ENTRY OR SETTLEMENT**

PLEASE TAKE NOTICE that an order

**NOTICE OF ENTRY**

of which the within is a (true) (certified) copy of a \_\_\_\_\_ duly entered in the office of the clerk of the within named court on \_\_\_\_\_ 20

**NOTICE OF SETTLEMENT**

will be presented for settlement to the Hon. \_\_\_\_\_ one of the judges of the within named Court, at \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_ o'clock M.

Dated: \_\_\_\_\_ 20

**Dated: April 14, 2008**

**Signature Pursuant to 22 NYCRR 130-1.1**

\_\_\_\_\_  
**Leonard F. Lesser, Esq.**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.  
-----

08 Civ. 00194 (JSR)(GWG)

**DECLARATION**

STATE OF OHIO                                 )  
                                                              ) ss.:  
COUNTY OF CUYAHOGA                     )

Rich Jukiewicz, being sworn deposes and says:

1. I am a Senior Purchasing Agent for Research Organics, Inc. ("Research Organics").

I have personal knowledge of the facts set forth below.

2. I submit this Declaration to supplement my April 10, 2008 Affidavit in this case.

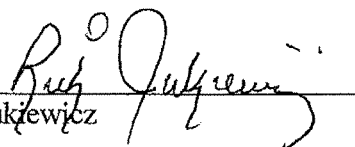
3. I have not been retained or specifically employed by Interstate in this case, nor am I an employee of Interstate. I am not being compensated or paid for my testimony in this case.

4. My April 10, 2008 Affidavit sets forth my conclusions concerning what I have witnessed in the chemical procurement industry with respect to cancellations of orders. I have not considered any data or information other than what I have personally witnessed in the industry over the past forty (40) years. I have no "exhibits" to be used as a summary of or support for the matters addressed in my April 10 Affidavit. I have not testified as an expert at trial or by deposition within the past four (4) years.

5. My experience in the chemical procurement industry is as follow: from 1996 through the present, I have been Senior Purchasing Agent for Research Organics; from 1984 through 1996, I was the Senior Purchasing Agent for Loctite Corporation, Inc., which manufactures a wide range of adhesives; from 1981 through 1984, I was a purchasing agent for Sentinel Consumer Products; and from 1969 through 1981, I was a plant buyer of chemicals for Sherman Williams Company.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Cleveland, Ohio  
August 25, 2008

  
Rich Jukiewicz

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.

08 Civ. 00194 (JSR)(GWG)

**DECLARATION**

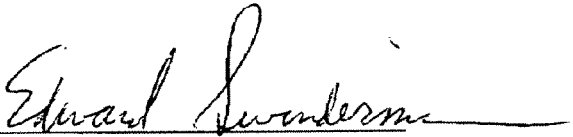
Edward Swinderman, hereby declares and states as follows:

1. I am a Director of Perin Resources, LLC, an international and domestic chemical trading company. I have personal knowledge of the facts set forth below.
2. I submit this Declaration to supplement my April 9, 2008 Declaration in this case.
3. I have not been retained or specifically employed by Interstate in this case, nor am I an employee of Interstate. I am not being compensated or paid for my testimony in this case.
4. My April 9 Declaration sets forth my conclusions concerning what I have witnessed in the chemical procurement industry with respect to cancellations of orders. I have not considered any data or information other than what I have personally witnessed in the industry over the past thirty (30) years. I have no "exhibits" to be used as a summary of or support for the matters addressed in my April 9 Declaration. I have not testified as an expert at trial or by deposition within the past four (4) years. A copy of my resume is attached.
5. From October 2003 through October 2005, I was employed by Jim Jordan & Associates, a market analysis firm, and developed a gasoline blendstocks weekly newsletter that presented worldwide supply and demand information, analysis of legislative impacts, weekly

pricing analysis, and perceived future problems/opportunities. I also authored five multi-client studies on ethanol, and five single-client studies on various topics.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Houston, Texas  
August 25, 2008

  
Edward Swinderman

**Edward M. Swinderman, P.E.**

**25510 Lyon Springs Court  
Spring, Texas 77373**

**281-528-9276  
emswinde@yahoo.com**

**OBJECTIVE**

Sales and marketing position in the basic chemicals industry.

**SUMMARY**

Successful sales/purchasing/marketing professional with proven track record in multiple chemical product areas. Strong analytical, contracting, negotiating, and organizational skills. From 1997-2003 the improved bottom line by over \$13 MM. Received President's Club award in 1992 and 1996 for outstanding performance in sales and marketing. Successful start-up of four new companies in 2003-2007.

**PROFESSIONAL EXPERIENCE**

**PERIN Resources, LLC, Houston, Texas**

**2007-08**

Independent Contractor

Chemical trading with primary emphasis on methanol and glycerin.

**BioSelect Fuels, Houston, Texas**

**2006-07**

Vice President-Sales

Assisted in the start-up of a grassroots biodiesel plant in Galveston, Texas. Developed and implemented an international sales and marketing plan when the domestic market netbacks became negative.

**Vertical North America, Houston, Texas**

**2005-06**

Senior Vice President

Responsible for developing fuel and industrial ethanol sales in North America. Exceeded yearly sales record in four months and generated profits exceeding \$1.5 MM. Presented supply and demand scenarios at two OPIS conferences and the Nebraska Ethanol Board.

**Jim Jordan & Associates, Houston, Texas**

**2003-05**

Vice President-Fuels

Primary developer of a gasoline blendstocks weekly newsletter that grew to 32 clients in one year and 46 at the end of two years. This newsletter presents worldwide supply and demand information, analysis of legislative impacts, weekly pricing analysis, and perceived future problems/opportunities. Authored five multi-client studies on fuel ethanol and five single client studies on various topics. Revenues exceeded \$220 thousand at the end of the first year and \$240 and the end of year two. Presented papers at the National Ethanol Conference and two OPIS conferences.

**Southern Garrett, LLC, Houston, Texas**

**2003**

Vice President- Methanol Sales

Provided startup assistance of sales, marketing and business planning for a new methanol distribution company.

- Increased sales price by 2 ¢ per gallon on 40 MM gallon per year sales.



**Lyondell Chemical Company, Houston, Texas****1978-2003**Business Manager – Methanol, Hydrogen and Heavy Fuels-(2000-2003)

Responsible for the P/L and marketing of Lyondell's 300MM gallon per year methanol business, 10 MM barrel per day heavy fuel business, and 25 MM SCF per day hydrogen business.

- Testified as an expert witness and developed the strategy in a methanol arbitration case that netted the company \$8 MM out of a possible \$8 MM.
- Improved netback on heavy fuels by 20-25¢ per barrel (\$750 M per year).
- Participated in a Strategic Business Analysis of the methanol business and determined that the business could not be profitable past 2004. Negotiated with buyers to sell the contract list and prepare for exiting the business.
- Purchased 140 MM gallons per year of methanol for the MTBE business at a price lower than Lyondell's methanol sales price.

Marketing Manager-Methanol, Butylenes, Alkylate, Hydrogen, MTBE-(1997-2000)

Responsible for product pricing, customer portfolio evaluation, contract development and negotiation, quality, and commercial development.

- Initiated process changes on a MTBE unit that realized savings of \$1.5 MM per year.
- Increased revenue/margin of the hydrogen and butylenes sales by renegotiating contracts and selling to higher netback customers (\$2.5-3.0 MM per year).
- Participated in the restructuring of the US methanol business (450 MM gallons per year).
- Additionally, this position had the management of the order entry and inventory control product specialists.

Account Manager (Lyondell Petrochemical) – Petrochemical Sales-(1989-1997)

Responsible for the product development and sales of ethylene, propylene, butadiene, benzene, toluene, orthoxylene, dicyclopentadiene, methanol, and resin oil in the Northeast section of the country.

- Sales increased from \$15 MM per year in 1989 to \$65 MM per year in 1996.
- Received the President's Club Award in 1992 and 1996 for outstanding performance in sales and marketing.

Methanol Product Manager-(1985-1987)

Responsible for the inventory, delivery, invoicing, and quality of methanol.

- Developed and administered tolls, storage agreements, and exchanges with customers and competitors to minimize logistics expenses.
- Provided market intelligence for pricing decisions.
- Made sales calls on customers to assist the sales manager with his high workload.

Propylene Product Manager (Arco Chemical), (1985-1987)

Responsible for the inventory, delivery, invoicing, and quality of chemical grade, polymer grade, and refinery grade propylene.

- Negotiated a new refinery grade tolling contract that saved \$2.5 MM per year.
- Developed project to debottleneck propylene splitter at an incremental profit of \$2.5 MM per year.

Manager of Contracts, (1983-1985)

Responsible for the purchasing of propylene, butadiene, toluene, and xylenes.

- Developed and negotiated a cogeneration project.

Process Engineering Supervisor (Oxirane/Arco Chemical) (1978-1983)

Supervised five engineers who provided technical service to the production department.

**Amoco Chemicals**, Texas City, Texas**1974-1978**Senior Process Engineer

Responsible for the process optimization of the styrene, polybutene, and Resin 18 units.

- Designed a forty percent expansion of the polybutene unit which reduced operating costs by \$1 MM per year.

**Firestone Synthetic Rubber**, Orange, Texas**1971-1974**Production Engineer

Responsible for daily optimization and troubleshooting of the feed preparation area of a solution polybutadiene plant.

- Team leader for the training and startup of new feed preparation area.

**Shell Oil Company**, Deer Park, Texas**1969-1971**Operations Engineer

Responsible for daily optimization and troubleshooting in the catalytic cracking department.

**EDUCATION**

Bachelor in Chemical Engineering, University of Dayton  
Masters in Engineering, Lamar University

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.

08 Civ. 00194 (JSR)(GWG)

**DECLARATION**

STATE OF PENNSYLVANIA    )  
                                          ) ss.:  
COUNTY OF ALLEGHENY    )


Albert R. Puntureri, being sworn deposes and says:

1. I am the President of Interstate Chemical Corporation ("Interstate"), defendant in this action. I have personal knowledge of the facts set forth below.

2. I submit this Declaration to supplement my April 11, 2008 Affidavit to make clear that that I do not regularly give expert testimony in my capacity as President of Interstate, and that I have never testified as an expert on behalf of Interstate or any other entity or individual.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Hermitage, Pennsylvania  
August 26, 2008

  
Albert R. Puntureri

Daniel J. Kornstein (DK - 3264)  
KORNSTEIN VEISZ WEXLER & POLLARD, LLP  
757 Third Avenue  
New York, New York 10017  
(212) 418-8600

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
MITSUBISHI INTERNATIONAL CORPORATION,	:
	:
Plaintiff,	:
	:
-against-	:
	:
INTERSTATE CHEMICAL CORPORATION,	:
	:
Defendant.	:
-----X	

08 CV 00194 (JSR) (GWG)

**PLAINTIFF'S FIRST  
REQUEST FOR  
PRODUCTION OF DOCUMENTS**

ECF Case

PLEASE TAKE NOTICE that pursuant to Rule 34 of the Federal Rules of Civil Procedure, and the applicable Local Rules, plaintiff Mitsubishi International Corporation, by the undersigned counsel, hereby propounds the following document requests to defendant Interstate Chemical Corporation. Defendant shall produce the requested documents for inspection and copying at the offices of Kornstein Veisz Wexler & Pollard, LLP, 757 Third Avenue, New York, New York 10017, within 30 days from the date of service. The Definitions and Instructions set forth below constitute an integral part of these Document Requests.

DEFINITIONS AND INSTRUCTIONS

The following definitions, rules of construction, and instructions shall apply to each of the requests set forth below.

1. "Plaintiff" means Mitsubishi International Corporation and, where applicable, any agents, employees, attorneys, representatives, accountants, or any persons acting on behalf of plaintiff.

2. "Defendant" means defendant Interstate Chemical Corporation and, where applicable, any agents, employees, attorneys, representatives, accountants, or any persons acting on behalf of defendant.

3. The "Methanol" shall mean the 10 mb of methanol that defendant allegedly agreed to purchase from plaintiff as set forth in the complaint in this action.

4. The definitions set forth in Local Rule 26.3 shall apply to these requests, and Local Rule 26.2 shall govern assertions of privilege.

5. Unless otherwise indicated, these requests are meant to include all documents dated or generated on or after November 1, 2007, up to the date of defendant's response to these requests.

6. Documents shall be produced in a manner that reasonably indicates which particular documents are being produced in response to specific requests.

7. The requirements of this demand for production of documents are continuing in nature so as to require supplemental answers if defendant discovers or obtains additional responsive documents after the initial response to these requests.



DOCUMENT REQUESTS

1. All documents and/or communications, electronic or otherwise, between plaintiff and defendant concerning the negotiation of the terms of sale of the Methanol.

2. All documents and/or communications, electronic or otherwise, between plaintiff and defendant concerning any other aspect of the Methanol.

3. All documents and/or communications, electronic or otherwise, between plaintiff and any third party concerning any aspect of the Methanol.

4. All other documents and/or communications, electronic or otherwise, concerning the Methanol.

5. All documents and/or communications, electronic or otherwise, concerning the price of methanol for the month of December 2007 including but not limited to any daily breakdown of the price of methanol during the month of December 2007.

6. All other documents and/or communications, electronic or otherwise, from any date, regarding any defense asserted by defendant in this action based on plaintiff's responsibility to mitigate damages.

7. All documents and/or communications, electronic or otherwise, regarding the "coast guard issue" referred to in Lori Cirillo's email message to Zack Ferguson-Steger dated December

19, 2007 and attached as part of Exhibit B to the complaint in this action.

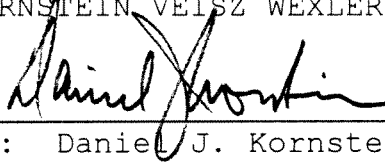
8. All documents and/or communications, electronic or otherwise, regarding the customer cancellation referred to in Lori Cirillo's email message to Zack Ferguson-Steger dated December 19, 2007 and attached as part of Exhibit B to the complaint in this action.

9. All documents and/or communications, electronic or otherwise, from January 1, 2006 to the present, regarding defendant's ability and/or capacity to receive and store bulk methanol.

10. All other documents and/or communications, electronic or otherwise, from any date, that defendant intends to rely upon to oppose plaintiff's claims or support any affirmative defenses in this action.

Dated: New York, New York  
March 18, 2008

KORNSTEIN VEISZ WEXLER & POLLARD, LLP



By: Daniel J. Kornstein (DK - 3264)

757 Third Avenue  
New York, New York 10017  
(212) 418-8600

Attorneys for Plaintiff  
Mitsubishi International Corporation

TO: Leonard F. Lesser, Esq.  
SIMON LESSER PC  
420 Lexington Avenue  
New York, New York 10170  
Attorneys for Defendant  
Interstate Chemical Corporation

Daniel J. Kornstein (DK - 3264)  
KORNSTEIN VEISZ WEXLER & POLLARD, LLP  
757 Third Avenue  
New York, New York 10017  
(212) 418-8600

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MITSUBISHI INTERNATIONAL :  
CORPORATION, : 08 CV 00194 (JSR) (GWG)  
:  
Plaintiff, :  
:  
-against- : **PLAINTIFF'S FIRST**  
:  
INTERSTATE CHEMICAL CORPORATION, : **SET OF INTERROGATORIES**  
:  
Defendant. : ECF Case  
-----X

PLEASE TAKE NOTICE that pursuant to Rule 33 of the Federal Rules of Civil Procedure, and the applicable Local Rules, plaintiff Mitsubishi International Corporation, by the undersigned counsel, hereby requests that defendant Interstate Chemical Corporation answer the following interrogatories fully in writing and under oath within 30 days from the date of service hereof. The Definitions and Instructions set forth below constitute an integral part of these interrogatories.

DEFINITIONS AND INSTRUCTIONS

The following definitions, rules of construction, and instructions shall apply to each of the interrogatories set forth below.

1. "You," "your," and "defendant" means defendant

Interstate Chemical Corporation and, where applicable, any agents, employees, attorneys, representatives, accountants, or any persons acting on behalf of defendant.

2. "Including" shall be construed to mean "without limitation."

3. The definitions set forth in Local Rule 26.3 shall apply to these interrogatories, and Local Rule 26.2 shall govern assertions of privilege.

4. The requirements of these interrogatories are continuing in nature so as to require supplemental answers if defendant discovers or obtains additional responsive information after the initial answers to these interrogatories.

5. If the party answering these interrogatories is incapable of answering an interrogatory with the level of detail requested, the party shall provide all information that the party is capable of providing with respect to the subject matter of the interrogatory.

#### INTERROGATORIES

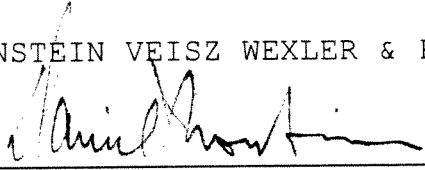
1. Identify all individuals with knowledge of information relevant to the subject matter of this action.

2. Please provide and explain your computations of plaintiff's damages for the alleged breach of contract in this action, including your calculations supporting your claim that plaintiff did not adequately mitigate damages.

3. Please: (i) list each category of documents you possess relevant to this action, including but not limited to pertinent insurance agreements, as well as other physical evidence or information of a similar nature; (ii) identify the custodian(s) of each category of documents; (iii) give the location of each category of documents; and (iv) provide a general description of the relevant documents in each category.

Dated: New York, New York  
March 19, 2008

KORNSTEIN VEISZ WEXLER & POLLARD, LLP

  
By: Daniel J. Kornstein (DK - 3264)

757 Third Avenue  
New York, New York 10017  
(212) 418-8600

Attorneys for Plaintiff  
Mitsubishi International Corporation

TO: Leonard F. Lesser, Esq.  
SIMON LESSER PC  
420 Lexington Avenue  
New York, New York 10170  
Attorneys for Defendant  
Interstate Chemical Corporation





**Mitsubishi International Corporation**

655 Third Avenue, New York, NY 10017  
Tel: (212) 605-2447 Fax: (212) 605-1058

December 5, 2007

To: Interstate Chemical co.  
Attn: Lori Cirillo  
Fax: 724-981-3675

RE: Methanol Sales FOB StRose, LA, December 20, 2007

Dear Lori:

We are pleased to reconfirm the details of our sales transaction agreed on December 4, 2007 as follows:

- |                            |                                                                                                                                                                                                                                                                       |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Contract type           | Sales                                                                                                                                                                                                                                                                 |
| 2. Contract number         | S-MeOH-1284                                                                                                                                                                                                                                                           |
| 3. Seller                  | Mitsubishi International Corporation<br>655 Third Avenue<br>New York, NY 10017                                                                                                                                                                                        |
| 4. Buyer                   | Interstate Chemical Co.<br>2797 Freedland Road<br>Hermitage, PA 16148                                                                                                                                                                                                 |
| 5. Product                 | Methanol in bulk                                                                                                                                                                                                                                                      |
| 6. Shipment                | December 20th, 2007. Buyer to provide seller with a five (5) working days notice. Such notice to be received by 12.00 noon EST, any nomination received later will be considered next business day.                                                                   |
| 7. Quality                 | As per ASTM D-1152-97                                                                                                                                                                                                                                                 |
| 8. Delivery                | FOB IMTT StRose, LA into buyer's nominated barge                                                                                                                                                                                                                      |
| 9. Volume                  | 10,000 bbls +/- 5% at buyer's option                                                                                                                                                                                                                                  |
| 10. Price                  | Fixed and flat at \$2.5500/gallon                                                                                                                                                                                                                                     |
| 11. Payment                | In US dollars, by wire transfer net thirty (30) days from B/L date into seller's designated account.                                                                                                                                                                  |
| 12. Inspection             | Inspection on both quality and quantity at seller's shore tank prior to the loading at the loading port carried out by an independent surveyor appointed by mutual agreement shall be taken as final. Inspector fees to be equally shared among all parties involved. |
| 13. Maritime conditions    | as per charter party                                                                                                                                                                                                                                                  |
| 14. Public Terminal Clause | Barges loading at a public terminal are loaded on a first come first served basis only. Mitsubishi International will not be held responsible for any delays incurred due to dock congestion                                                                          |

16. Incoterms Incoterms 2000 and latest amendments are applicable, unless stated otherwise herein.
17. Law New York Law to govern this transaction.
18. Others Mitsubishi International Corp. General Terms and Conditions to apply where not inconsistent with the above.
19. Contact for scheduling Zack Ferguson-Steger  
Tel 212-605-2419  
Fax 212-605-1058  
Email: zack.ferguson-steger@mitsubishicorp.com

This confirmation constitutes the entire contract and represents our understanding of the terms and conditions of our agreement. We are pleased to have concluded this transaction with you. Any apparent discrepancies or omissions must be brought to our attention within the next two working days or are deemed waived.

#### GENERAL TERMS AND CONDITIONS OF SALE

1. **WARRANTIES:** Seller warrants only that the Goods conform to the description stated on the face hereof. **SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR ARISING UNDER LAW OR EQUITY OR CUSTOM OF TRADE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty concerning the Goods not expressly included herein.
2. **SOLE REMEDY; LIMITATION OF LIABILITY:** Seller's sole liability and Buyer's exclusive remedy in connection with the transaction(s) described on the face hereof will be replacement of any non-conforming goods or, at Seller's option, refund of all or a portion of the purchase price. **IN NO EVENT WILL SELLER BE LIABLE FOR, AND BUYER HEREBY WAIVES ANY RIGHT TO, ANY LOST PROFITS, LOSS OF USE, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** Buyer shall confirm the accuracy of all shipments, as to the identity, quantity and quality of the Goods upon receipt. Buyer waives all claims of non-conformity with respect to the Goods or their shipment or delivery unless made in writing by Buyer to Seller, specifically stating the details of such non-conformity, within five (5) days after Buyer receives the Goods. Non-conforming goods may be returned to Seller only with prior notice by Buyer to Seller and with Seller's approval for such return. **Seller's liability shall in no event be greater in amount than the purchase price of the Goods in respect of which damages are claimed.** Any action by Buyer for breach of contract must be commenced within one (1) year after the cause of action has accrued.
3. **TAXES; INCREASED COSTS:** Buyer shall pay all taxes, excises, fees or charges with respect to the sale or transportation of the Goods. Any increase in Seller's costs of performance after the date stated in the box marked DATE OF CONTRACT on the face hereof resulting from increased freight rates, increased or additional freight surcharges, additional taxes, duties, assessments or other charges imposed or collected by any governmental or taxing authority, increased insurance rates, and all other additional charges relating to the sale, loading, unloading, delivery, storage, and transportation of the Goods, shall be for Buyer's account.
4. **SHIPMENT:** All shipment or delivery dates are approximate. The date of the bill of lading shall constitute conclusive evidence of the date of shipment. Partial shipment and/or transshipment shall be permitted. No non-conforming tender, or delay or failure in the shipment or delivery of any one lot shall excuse Buyer from accepting tender of any remaining installments hereunder. In case of failure of performance by Buyer hereunder, Seller may defer or suspend further shipments or deliveries or, at its option, cancel this Contract as to any Goods which have not been



## Mitsubishi International Corporation

655 Third Avenue, New York, NY 10017  
Tel: (212) 605-2447 Fax: (212) 605-1058

shipped or delivered, and any losses, liabilities, costs or expenses resulting from such deferral or cancellation shall be for Buyer's account.

5. **BUYER'S SOLVENCY; PURCHASE MONEY SECURITY INTEREST:** Buyer represents and warrants to Seller that it is not insolvent, as that term is defined in the Uniform Commercial Code (U.C.C.). Buyer hereby grants to Seller a purchase money security interest in the Goods identified on the face hereof.
6. **FORCE MAJEURE:** Seller shall not be liable for any delay of or failure to perform its obligations hereunder for any cause beyond its reasonable control, which affects Seller or any other person (whether known or unknown to Buyer) involved in the sale, manufacturing, supply, shipment or delivery of the Goods. Shipment or delivery dates shall be extended for a period equal to the time lost by reason of any such cause; provided, however, that if any such delay exceeds ninety (90) days, either party shall have the right to cancel this Contract with respect to such shipment or delivery by written notice to the other party without any liabilities to the other party. Force majeure shall not excuse any nonpayment by Buyer. Except as otherwise provided herein, U.C.C. Section 2-615 shall govern the rights of both parties hereto in the event of such delay or non-performance.
7. **INDEMNIFICATION:** Seller shall not be liable to Buyer in any way for losses, liabilities, settlements, costs or expenses (including attorneys' fees) paid or incurred by Buyer resulting from any claim that the Goods or their sale infringe any patent, trademark, copyright, design or other intellectual or industrial property right of any third party and, if Buyer has furnished the specifications for the Goods, Buyer shall indemnify and defend Seller against any and all losses, liabilities, settlements, costs and expenses (including attorneys' fees) paid or incurred by Seller resulting from any such claim. Buyer agrees to defend, indemnify and hold Seller harmless against claims by any third party (including Buyer's employees and customers) arising out of Buyer's use, storage, handling or resale of the Goods.
8. **LATE CHARGE; SETOFF RIGHTS; COLLECTION COSTS:** If any invoice amount is not paid in full when due, Seller reserves the right to request advance payment for future shipments. If any of the purchase price is not paid in full when due, Buyer shall pay a late charge on the amount unpaid for each day from the due date until paid in full at a rate of five percent above the prime commercial lending rate announced from time to time by the Chase Manhattan Bank, N.A. at its principal New York City office or the maximum lawful rate allowed under permitted applicable law, whichever is lower. Late charges shall be payable upon demand. The parties hereby agree that if for any reason, Buyer has not made payment in full to Seller for any amount owing to Seller on or prior to the due date for such amount, Seller may, in its sole discretion, set off such outstanding amount against any amount owed by Seller that is or becomes due and payable. In the event that Buyer fails to cure any nonpayment within thirty (30) days after Buyer's receipt of notice from Seller describing such breach, then Buyer agrees to pay all of Seller's costs of collection, including, but not limited to, reasonable attorneys' fees.
9. **TERM AND TERMINATION:** This Contract shall take effect on the DATE OF CONTRACT on the face hereof. Either party may terminate this Contract immediately without giving notice under the following conditions associated with the other party: (1) Insolvency or bankruptcy; (2) Assignment for the benefit of creditors; (3) Expropriation of business assets; (4) Dissolution or liquidation; or (5) Appointment of a trustee or receiver for all or any part of assets. Seller may terminate this Contract in the event that Buyer fails to cure any breach of the Contract within thirty (30) days after Buyer's receipt of notice from Seller describing such breach. Purchase orders confirmed by Seller cannot be cancelled or modified by Buyer without the prior written consent of Seller.
10. **ENTIRE AGREEMENT; AMENDMENT AND NON-WAIVER:** Acceptance of Buyer's purchase order is expressly conditioned upon Buyer's acceptance of the terms and conditions herein and the exclusion of any conflicting terms that may be contained in Buyer's purchase order. Any objection to any terms herein must be in writing and shall not be deemed timely unless received by Seller within seven (7) days of the date of this Contract. This Contract, including the face hereof, is intended by the parties as the final, complete, and exclusive expression of their agreement relating to the subject matter hereof, and supersedes any prior agreement or understanding between them. No parol evidence, course of dealing, conduct, performance or usage of the trade shall be relevant to supplement or explain it. No waiver, amendment modification of any of the provisions hereof shall be effective, unless made in writing and signed by both parties. Failure by either party to exercise or enforce any right conferred by this Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or any other right on any later occasion.

11. **NO ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties under this Contract without the prior written consent of Seller.

12. **GOVERNING LAW; ARBITRATION:** This Contract shall be governed by and construed in accordance with the law of the State of New York, without regards to its choice-of-law provisions. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to any purchases made hereunder. Seller and Buyer agree that any controversy or claim arising out of or relating to this Contract, or the breach hereof, shall be settled by arbitration in New York, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrator(s) shall be final and binding upon the parties hereto and judgment on the award may be entered in any court of competent jurisdiction.

13. **SELLER'S RIGHT FOR DEMANDING ADEQUATE ASSURANCE:** If Buyer's failure to make payment or otherwise perform its obligations hereunder is reasonably anticipated, Seller may demand adequate assurance, satisfactory to Seller, of the due performance of this Contract by Buyer and withhold shipment or delivery of the undelivered Goods. Unless Buyer gives Seller such assurance within forty-eight (48) hours of Seller's demand, Seller may, without prejudice to any other remedies it may have, cancel the portion of this Contract which relates to the undelivered Goods, and all accounts payable by Buyer to Seller for the Goods delivered under this contract shall, upon Seller's declaration, become immediately due and payable in cash in full.

14. **SELLER'S RIGHTS AND REMEDIES:** If any of the following events shall occur: (a) failure by the Buyer to perform any provision of this Contract or any other agreement with Seller, if any, and such failure not being cured within thirty (30) days after the date of notice thereof being dispatched by the Seller to the Buyer requiring the Buyer to remedy such failure; (b) insolvency, bankruptcy, liquidation or dissolution of the Buyer; (c) institution of any proceeding against the Buyer under the provisions of any insolvency or bankruptcy law or any law for the relief of debtors; (d) appointment of a trustee, receiver, administrator or liquidator over any of the Buyer's assets or property; (e) issuance of an order for the attachment of the Buyer's assets or property; (f) general assignment by the Buyer for the benefit of its creditors; (g) cancellation or deduction of trade credit insurance coverage insured for Seller against risk of Buyer's failure to make the payment of contract price or any other amount payable by Buyer to Seller hereunder in such way as Seller reasonably judges that such cancellation or deduction would impair Seller's interest or benefit from this Contract, or (h) any material adverse change (as determined by MIC in its sole discretion) shall have occurred in (x) Buyer's financial condition or (y) Buyer's business, or any other change shall have occurred that may have an adverse effect on Buyer's ability to perform its obligations under this Contract, then the Seller may, without prejudice to the other rights and remedies which it may have, (i) forthwith terminate this Contract in whole or in part by notice in writing to the Buyer, (ii) delay or suspend shipment or delivery of the Goods, (iii) stop the Goods in transit, and/or (iv) forthwith demand immediate payment of all sums payable by the Buyer under this Contract or any other agreement with the Buyer, whereupon the same shall become immediately due and payable.

Interstate Chemical Co.

Mitsubishi International Corp.

\_\_\_\_\_  
By:  
Title:

\_\_\_\_\_  
By:  
Title:

THOMAS RESZLER

12/18/2007 07:03 PM

---

To: ZACK FERGUSON-STEGER/AM/MITSUBISHI CORP@MITSUBISHI CORP  
cc: KATHY FLOOD/AM/MITSUBISHI CORP@MITSUBISHI CORP  
bcc:  
Subject: Re: Methanol

We can delay the shipment of course, but no way to cancel.

----- Original Message -----  
From: zack.ferguson-steger  
Sent: 12/18/2007 06:40 PM EST  
To: THOMAS RESZLER  
Cc: KATHY FLOOD  
Subject: Fw: Methanol

Thomas,  
Pls see email below.  
I think we should tell them we can push it to next month but keep the same price. ?  
Zack

----- Original Message -----  
From: "Lori Cirillo" [lcirillo@interstatechemical.com]  
Sent: 12/18/2007 11:28 AM EST  
To: ZACK FERGUSON-STEGER  
Cc: "Janice Perilli" <jperilli@interstatechemical.com>  
Subject: RE: Methanol

Zack -

We are having a problem with this barge. We are planning to ship this to Owensboro, KY and there is still not coast guard approval yet for receiving barges at this destination. We do not have another home for this barge.

Can we cancel this barge because of this coast guard issue?

Lori Cirillo  
Director of Chemical Procurement  
724-981-3771 #1118

MIC 000054



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.

08 Civ. 00194 (JSR)(GWG)

**NOTICE OF DEPOSITION**

PLEASE TAKE NOTICE that pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure, defendant Interstate Chemical Corporation ("Interstate") will conduct the deposition of plaintiff Mitsubishi International Corporation ("Mitsubishi"), by one or more of its officers, directors, managing agents, employees or other persons whom it shall designate pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure as having the most knowledge concerning the matters set forth in Schedule A annexed hereto.

The deposition will commence on April 30, 2008, beginning at 9:30 a.m. and continue from day to day until completed. The deposition will be stenographically recorded. The deposition will take place at the offices of Simon Lesser PC, 420 Lexington Avenue, New York, New York 10170. In addition, Mitsubishi is requested to provide the undersigned counsel, at least five (5) days before the deposition, with a written designation of the names and positions of each designee who will testify on behalf of Mitsubishi, and the subject matter categories set forth in Schedule A as to which each designee will testify.



You are invited to attend and cross-examine.

Dated: New York, New York  
March 19, 2008

SIMON LESSER PC

By: 

Leonard F. Lesser, Esq.

420 Lexington Avenue  
New York, New York 10170  
t: 212.599.5455  
f: 212.599.5459  
Attorneys for defendant Interstate Chemical  
Corporation

**SCHEDULE A**

**SUBJECTS OF INQUIRY**

1. The documents produced in response to Interstate's First Set of Document Requests, dated March 19, 2008.
2. The allegations contained in the Complaint.
3. All transactions between Mitsubishi and Interstate.
4. All transactions between Mitsubishi and Tauber Petrochemical Corporation.
5. The price Mitsubishi paid for the methanol it sold at \$2.05 per gallon as alleged in ¶ 27 of the Complaint.

Daniel J. Kornstein (DK - 3264)  
KORNSTEIN VEISZ WEXLER & POLLARD, LLP  
757 Third Avenue  
New York, New York 10017  
(212) 418-8600

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
MITSUBISHI INTERNATIONAL CORPORATION,	:
	:
Plaintiff,	:
	:
-against-	:
	:
INTERSTATE CHEMICAL CORPORATION,	:
	:
Defendant.	:
-----X	

08 CV 00194 (JSR) (GWG)

**PLAINTIFF'S DESIGNATION  
OF INDIVIDUAL TO SERVE  
AS WITNESS FOR DEPOSITION  
PURSUANT TO RULE 30(b)(6)**

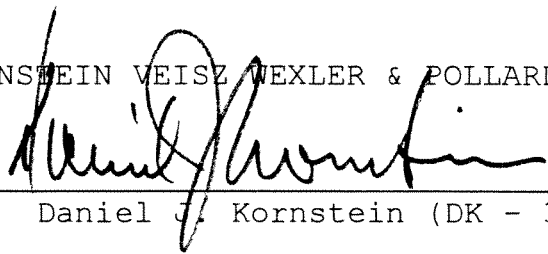
ECF Case

Plaintiff Mitsubishi International Corporation ("MIC"), in response to defendant's Notice of Deposition dated March 19, 2008, hereby designates Thomas Reszler, Department Manager, Methanol and Ethanol, as MIC's Rule 30(b)(6) witness. MIC hereby objects to Subjects of Inquiry 3-5 on Schedule A attached to the Notice of Deposition on grounds including, but not limited to, that they seek information that is not material and necessary to the prosecution and defense of this action and not reasonably

calculated to lead to the discovery of admissible evidence.

Dated: New York, New York  
April 25, 2008

KORNSTEIN VEISZ WEXLER & POLLARD, LLP

  
By: Daniel J. Kornstein (DK - 3264)

757 Third Avenue  
New York, New York 10017  
(212) 418-8600

Attorneys for Plaintiff

TO: Leonard F. Lesser  
SIMON LESSER PC  
420 Lexington Avenue  
New York, New York 10170  
(212) 599-5455  
Attorneys for Defendant

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x

MITSUBISHI INTERNATIONAL CORPORATION,

Plaintiff,

-against-

INTERSTATE CHEMICAL CORPORATION,

Defendant.

-----x

August 12, 2008  
10:05 a.m.

Deposition of THOMAS RESZLER, taken  
by the plaintiff pursuant to Rule 30(b)(6),  
and held at the offices of Kornstein Veisz  
Wexler & Pollard, LLP, 757 Third Avenue,  
New York, New York 10017, before Michael  
Catania, a Shorthand Reporter and Notary  
Public of the State of New York.

2 (Pages 2 to 5)

Page 2	Page 4
<p>1 2 APPEARANCES: 3 4 KORNSTEIN VEISZ WEXLER &amp; POLLARD, LLP 5 Attorneys for the Plaintiff 6 757 Third Avenue 7 New York, New York 10017 8 BY: DANIEL J. KORNSTEIN, ESQ. 9 - and - 10 AMY C. GROSS, ESQ., 11 of Counsel 12 13 SIMON LESSER, P.C. 14 Attorneys for the Defendant 15 The Graybar Building 16 420 Lexington Avenue 17 New York, New York 10170 18 BY: LEONARD F. LESSER 19 - and - 20 ANDREW DEAN, ESQ., 21 of Counsel 22 23 ALSO PRESENT: 24 DIANE KNOX, Senior Counsel 25 Mitsubishi International Corporation</p>	<p>1 Thomas Reszler 2 THOMAS RESZLER, 3 having been first duly sworn by 4 a Notary Public of the State of 5 New York, was examined and 6 testified as follows: 7 EXAMINATION BY 8 MR. LESSER: 9 Q. Good morning. I am Len Lesser. I 10 represent Interstate Chemical Company in this 11 action. 12 Can you state your for me your 13 position with Mitsubishi International 14 Corporation? 15 A. The department manager for the 16 methanol and ethanol department. 17 Q. And the methanol and ethanol 18 department is part of the chemicals group of 19 Mitsubishi International Corporation? 20 A. That is correct. 21 Q. Is it also correct that Mitsubishi 22 International Corporation is a wholly-owned 23 subsidiary of Mitsubishi Corporation, the 24 Japanese corporation? 25 A. Correct.</p>
Page 3	Page 5
<p>1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and between the parties hereto, 4 through their respective counsel, that 5 the certification, sealing and filing of 6 the within examination will be and the 7 same are hereby waived. 8 IT IS FURTHER STIPULATED AND AGREED 9 that all objections, except as to the 10 form of the question, will be reserved to 11 the time of the trial. 12 IT IS FURTHER STIPULATED AND AGREED 13 that the within examination may be signed 14 before any Notary Public with the same 15 force and effect as if signed and sworn 16 to before this Court. 17 18 19 20 21 22 23 24 25</p>	<p>1 Thomas Reszler 2 Q. For how long have you been the 3 methanol and ethanol department manager? 4 A. April 1st, 2007. 5 Q. What was your position prior 6 to April '07? 7 A. Marketing manager for the methanol 8 and fiber intermediates department. 9 Q. Can you describe that department? 10 A. That was split after, on April 1st 11 '07, just to various products together, fiber 12 intermediates. And that's it. 13 Q. Methanol was part of that 14 department at that time? 15 A. Yes. 16 Q. After that time, they split it off 17 and you became the department manager for 18 ethanol and methanol? 19 A. That is correct. 20 Q. For how long were you the marketing 21 manager before that split? 22 A. About seven years. 23 Q. Did you hold any other title for 24 Mitsubishi International Corporation? 25 A. When I started, I was assistant</p>



Page 6

1 Thomas Reszler  
2 manager.

3 Q. When did you start?

4 A. I started in August 1999.

5 Q. When did you assume the role of  
6 marketing manager?

7 A. I believe it was about 2001.

8 Q. Can you briefly describe for me  
9 your duties and responsibilities as the  
10 department manager for the methanol and  
11 ethanol department of the chemicals group?

12 A. I set the strategy for the  
13 department, the long-term, mid long-term views  
14 on the market, and making the decisions on  
15 market growth.

16 I also make the day-to-day trading  
17 activities for the department, whether buying  
18 or selling or short or long.

19 I run the department in terms of  
20 hiring employees and running the budget and  
21 checking costs, accounting, financials for the  
22 department.

23 Q. Who do you report to, sir?

24 A. I report to the vice president of  
25 petrochemicals, Kevin Fallon.

Page 7

1 Thomas Reszler

2 Q. Do you have any other direct  
3 reports other than Mr. Fallon?

4 A. I have another vice president,  
5 Mr. Kato. He is a VP chemicals.

6 Q. Both of these individuals are VPs  
7 of MIC as opposed to MC?

8 A. That's right.

9 Q. Any other direct reports other than  
10 these two vice presidents?

11 A. No.

12 Q. How many people report to you, sir,  
13 approximately?

14 A. Five.

15 Q. Who are they?

16 A. Zack Ferguson-Steger, Khawar  
17 Ingal, Ryoichi Murao, Kathy Flood, and Nancy  
18 Walsh.

19 Q. What is Mr. Ferguson-Steger's  
20 position?

21 A. Marketing manager.

22 Q. What are his responsibilities?

23 A. He markets and sells methanol in  
24 the northeast, U.S. Gulf, and he is also in  
25 charge of some logistics.

Page 8

1 Thomas Reszler

2 Q. I did see in the documents  
3 Ms. Flood's name. What is her position?

4 A. She's a logistics manager.

5 Q. What are her responsibilities?

6 A. She arranges all of the logistics  
7 for methanol movement in the U.S. Gulf. Also  
8 she is -- she has some clerical work for -- in  
9 supervising and accounting.

10 Q. Mr. Ferguson-Steger reports to you  
11 directly and there is no intermediary that he  
12 reports to?

13 A. No.

14 Q. Can you describe for me in sum and  
15 substance the business of the methanol and  
16 ethanol department of the chemicals group of  
17 MIC generally, what it does?

18 A. We buy, sell methanol. We store it  
19 with logistics in the operation.

20 Q. From whom do you purchase methanol?

21 A. We buy from the -- from some subs  
22 that produce methanol in Venezuela.

23 Q. When you say some subs, subs of MC?

24 A. Of MC.

25 Q. What is name of the sub?

Page 9

1 Thomas Reszler

2 A. Methanol de Oriente.

3 Q. Methanol de Oriente is a subsidiary  
4 of --

5 A. It's a joint venture.

6 Q. A joint venture between whom?

7 A. Between Mitsubishi Corporation of  
8 Tokyo, Mitsubishi International Corporation  
9 Gas Chemical, and Polar and Pecquivan and IFC.

10 Q. Just to be clear, because I think  
11 there might have been testimony that the --  
12 strike that.

13 Is it the case that the methanol  
14 and ethanol department of MIC chemical group  
15 purchases methanol solely from this joint  
16 venture?

17 A. No.

18 Q. From whom else?

19 A. We buy on the market. We buy in  
20 Europe. We buy everywhere where it makes  
21 sense for us.

22 Q. In terms of percentages, does the  
23 methanol and ethanol department buy more from  
24 the joint venture than from other sources?

25 A. No. Less than 50 percent.

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 Thomas Reszler</p> <p>2 Q. The purchases that the methanol and</p> <p>3 ethanol department of the chemicals group</p> <p>4 makes from the joint venture, is that pursuant</p> <p>5 to some contract or is that fluctuating,</p> <p>6 depending on the market or society factors?</p> <p>7 A. Can you rephrase the question?</p> <p>8 Q. The purchases that MIC chemical</p> <p>9 group makes of methanol from the joint</p> <p>10 venture, is that pursuant to a global</p> <p>11 agreement?</p> <p>12 A. Yes.</p> <p>13 Q. Does that agreement provide for</p> <p>14 monthly purchases, weekly purchases, or</p> <p>15 purchases on some other time frame?</p> <p>16 A. It depends on the agreement between</p> <p>17 the joint venture and Mitsubishi International</p> <p>18 Corporation.</p> <p>19 Q. Have you seen the agreement?</p> <p>20 A. Yes. It is monthly. But we can</p> <p>21 differently.</p> <p>22 Q. Monthly volume?</p> <p>23 A. Yes.</p> <p>24 Q. What is the monthly volume pursuant</p> <p>25 to that arrangement or agreement?</p>	<p>1 Thomas Reszler</p> <p>2 A. Consumers, traders, producers as</p> <p>3 well. It depends. We have long-term</p> <p>4 contracts and we have spot contracts.</p> <p>5 Q. Approximately how many long-term</p> <p>6 contracts are there currently?</p> <p>7 A. Ten.</p> <p>8 Q. Has that number gone up or down</p> <p>9 over the past few years?</p> <p>10 A. It varies.</p> <p>11 Q. In terms of spot contracts, can you</p> <p>12 compare generally the volume of sales pursuant</p> <p>13 to long-term contracts as opposed to spot</p> <p>14 contracts?</p> <p>15 A. It varies on years, but 50/50. And</p> <p>16 it can be 60/40 or 40/60.</p> <p>17 Q. For currently 2008, what would you</p> <p>18 say it is?</p> <p>19 A. I would say probably 60 percent</p> <p>20 contracts and 40 percent spot.</p> <p>21 Q. 60 percent long-term contracts and</p> <p>22 40 percent spot?</p> <p>23 A. Yes.</p> <p>24 Q. For 2007?</p> <p>25 A. I would say probably the reverse;</p>
Page 11	Page 13
<p>1 Thomas Reszler</p> <p>2 A. In average, 10,000 tons.</p> <p>3 Q. This 10,000 tons, the average</p> <p>4 10,000 tons is purchased from where?</p> <p>5 A. From Venezuela.</p> <p>6 Q. It is imported from Venezuela into</p> <p>7 the USA?</p> <p>8 A. Yes.</p> <p>9 Q. Into which port or ports?</p> <p>10 A. Into New Jersey, into Louisiana,</p> <p>11 and Texas.</p> <p>12 Q. And in Louisiana that is St. Rose,</p> <p>13 and in Texas, Houston?</p> <p>14 A. Yes.</p> <p>15 Q. How is it determined which of the</p> <p>16 three ports the monthly volume will be</p> <p>17 imported into?</p> <p>18 A. It depends on the needs every</p> <p>19 month.</p> <p>20 Q. The chemicals group also sells</p> <p>21 methanol, does it not?</p> <p>22 A. Correct.</p> <p>23 Q. To whom?</p> <p>24 A. Various parties.</p> <p>25 Q. What types of parties?</p>	<p>1 Thomas Reszler</p> <p>2 more spots, 60 percent spots and 60 percent</p> <p>3 contracts.</p> <p>4 Q. What about 2006?</p> <p>5 A. 60 percent spots, 40 percent</p> <p>6 contracts.</p> <p>7 Q. What type of traders does</p> <p>8 Mitsubishi International Corporation sell</p> <p>9 methanol to?</p> <p>10 A. Any trader who we have a credit</p> <p>11 line with who we are allowed to sell to.</p> <p>12 Q. Approximately how many traders have</p> <p>13 such credit lines?</p> <p>14 A. Five to ten.</p> <p>15 Q. You said that the company sells to</p> <p>16 producers as well?</p> <p>17 A. Occasionally.</p> <p>18 Q. When you say occasionally in terms</p> <p>19 of sales volume, how much percentage of sales</p> <p>20 volume, let's say for the last year, was to</p> <p>21 producers as opposed to either consumers or</p> <p>22 traders?</p> <p>23 A. 10, 15 percent of total spot sales.</p> <p>24 Q. I took the liberty of doing some</p> <p>25 research on Mitsubishi International</p>

Page 14

1 Thomas Reszler  
2 Corporation, and I was able to find on the MIC  
3 Web site some information about the company,  
4 as well as a bio about you.

5 I take it that you have seen this  
6 before from the 2007 June Trade Winds  
7 publication?

8 A. Yes.

9 Q. In it, it says: As the methanol  
10 and ethanol department manager, he has been  
11 charged with the task of helping the methanol  
12 business double by 2010 by concurrently  
13 developing the methanol business.

14 Was that an accurate statement in  
15 2007 in June when it was included in the  
16 report?

17 A. Yes.

18 Q. Has Mitsubishi International  
19 Corporation worked to double the methanol  
20 business?

21 A. We're working on it.

22 Q. What is the volume today compared  
23 to the volume when you took over the  
24 management of the department?

25 A. Similar.

Page 15

1 Thomas Reszler

2 Q. What is that?

3 A. Similar; growing lightly.

4 Q. Continuing to grow?

5 A. We're trying to grow, but growth  
6 depends on profit.

7 Q. How is the profit; has it been  
8 increasing, decreasing, or remained constant  
9 over the past two years?

10 A. Increasing.

11 Q. Between 2006 and 2007, can you  
12 estimate the growth of profit percentage-wise?

13 A. 600 percent -- 500 percent.

14 Q. Between 2007 and 2008, can you  
15 estimate the growth?

16 A. Negative growth.

17 Q. Approximately by how much?

18 A. In profit or volume?

19 Q. Let's talk about profit first.

20 A. It's early to say, but it should be  
21 1/5 or less on the 2007 profit.

22 Q. So that 2007 profit was up by  
23 500 percent in 2006, and you are estimating  
24 that the 2008 profit will be down by 500  
25 percent?

Page 16

1 Thomas Reszler

2 A. Yes, it will be down.

3 Q. It's hard to say?

4 A. It's very early; it's very hard to  
5 say now.

6 Q. The 500 percent growth in 2007, is  
7 that based upon an annual year, or is your  
8 fiscal year different than the annual year?

9 A. That was a fiscal year.

10 Q. What is the fiscal year?

11 A. April 1st to March 31st.

12 Q. April 1st, 2006 to March 31st,  
13 2007?

14 A. Correct.

15 Q. Okay.

16 MR. LESSER: Mark the notice of  
17 deposition as Defendant's Exhibit A.

18 (Defendant's Exhibit A, notice of  
19 deposition, marked for identification, as  
20 of this date.)

21 MR. LESSER: Mark as Defendant's  
22 Exhibit B, plaintiff's designation of  
23 individual to serve as a witness for  
24 deposition pursuant to Rule 30(b)(6).  
25 (Defendant's Exhibit B, plaintiff's

Page 17

1 Thomas Reszler

2 response to deposition notice, marked for  
3 identification, as of this date.)

4 BY MR. LESSER:

5 Q. I hand you what has been marked for  
6 identification as Defendant's Exhibits A and  
7 B. Defendant's Exhibit A is the notice of  
8 deposition sent pursuant to Rule 30(b)(6), and  
9 B being the plaintiff's designation and  
10 response to the deposition notice.

11 Do you understand that you have  
12 been designated as the 30(b)(6) witness for  
13 MIC for the purpose of this deposition?

14 A. Yes.

15 Q. If you look at the third page of  
16 Exhibit A, the subjects of inquiry, subject  
17 number one are the documents produced in  
18 response to Interstate's document request.

19 Do you see that?

20 A. Yes.

21 Q. Are You familiar, sir, with the  
22 documents that were introduced to Interstate  
23 in this case?

24 A. Yes.

25 Q. Is that based on personal knowledge



6 (Pages 18 to 21)

Page 18	Page 20
<p>1 Thomas Reszler</p> <p>2 or upon review of the documents?</p> <p>3 A. Both.</p> <p>4 Q. Sir, number two the allegations in</p> <p>5 the complaint, the same question: Your</p> <p>6 designation as the 30(b)(6) witness, is that</p> <p>7 based upon personal knowledge or information</p> <p>8 you were provided by other corporate</p> <p>9 representatives for the purpose of this</p> <p>10 deposition?</p> <p>11 A. Personal knowledge.</p> <p>12 Q. Items 3, 4 and 5 were the subject</p> <p>13 of an objection in Exhibit B. I'm going to</p> <p>14 ask you a couple of questions about those</p> <p>15 numbered items.</p> <p>16 First with respect to number 3, all</p> <p>17 transactions between Mitsubishi International</p> <p>18 Corporation and Interstate, do you have</p> <p>19 personal knowledge of the transactions, the</p> <p>20 historical transactions between Mitsubishi</p> <p>21 International Corporation and Interstate?</p> <p>22 A. Yes.</p> <p>23 Q. The same question for number 4, do</p> <p>24 you have personal knowledge concerning the</p> <p>25 transactions between Mitsubishi International</p>	<p>1 Thomas Reszler</p> <p>2 You have personal knowledge with</p> <p>3 respect to the documents that were produced;</p> <p>4 is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know how these documents</p> <p>7 were culled, and I mean gathered?</p> <p>8 A. We were requested to provide</p> <p>9 everything that we had related to the case.</p> <p>10 Q. From whose files did you obtain</p> <p>11 documents that comprise those included within</p> <p>12 Defendant's Exhibit C?</p> <p>13 A. From my files, from Mr. Ferguson's</p> <p>14 files.</p> <p>15 Q. Anybody else's files?</p> <p>16 A. No.</p> <p>17 Q. What files do you maintain in</p> <p>18 connection with the transaction that is the</p> <p>19 subject matter of this lawsuit?</p> <p>20 A. Can you -- what do you mean?</p> <p>21 Q. I will clarify the question based</p> <p>22 on how I maintain my own files. I keep</p> <p>23 electronic as well as e-mail and paper and a</p> <p>24 separate file of contracting documents, a</p> <p>25 separate file of background materials, and</p>
Page 19	Page 21
<p>1 Thomas Reszler</p> <p>2 Corporation and Tauber?</p> <p>3 A. Yes.</p> <p>4 Q. And the same thing for number 5, do</p> <p>5 you have personal knowledge with respect to</p> <p>6 the prices that Mitsubishi International</p> <p>7 Corporation paid for the methanol that it sold</p> <p>8 to Tauber, as alleged in the complaint?</p> <p>9 A. Yes.</p> <p>10 Q. Let's go to item number 1, which</p> <p>11 are the documents that were produced to</p> <p>12 Interstate in this case.</p> <p>13 MR. LESSER: Mark this group of</p> <p>14 documents as Defendant's Exhibit C.</p> <p>15 (Defendant's Exhibit C, group of</p> <p>16 documents, marked for identification, as</p> <p>17 of this date.)</p> <p>18 BY MR. LESSER:</p> <p>19 Q. I hand you what has been marked for</p> <p>20 identification as Defendant's Exhibit C.</p> <p>21 Defendant's Exhibit C is a copy of the</p> <p>22 July 2nd, 2008 cover letter from counsel,</p> <p>23 two-page privileged log, and redaction log,</p> <p>24 and the MIC documents Bates numbered 1 through</p> <p>25 129.</p>	<p>1 Thomas Reszler</p> <p>2 things of that nature.</p> <p>3 The question to you concerning your</p> <p>4 files that you testified in part comprises</p> <p>5 Defendant's Exhibit C, what files did you</p> <p>6 review in order to produce documents to</p> <p>7 Interstate?</p> <p>8 A. Files of all of the contracts, all</p> <p>9 the e-mail exchanges, and other documents that</p> <p>10 are necessary for running the department.</p> <p>11 Q. Do you keep a separate file for all</p> <p>12 of your customers?</p> <p>13 A. For contracts, separate files.</p> <p>14 Q. For example, what files do you</p> <p>15 maintain in your office concerning Interstate</p> <p>16 Chemical?</p> <p>17 A. We just -- I just have one file</p> <p>18 with all contracts by month, and Interstate</p> <p>19 would be in there.</p> <p>20 Q. Do you keep a separate file for</p> <p>21 customers as well?</p> <p>22 A. No.</p> <p>23 Q. With respect to --</p> <p>24 A. Let me correct this. For spots I</p> <p>25 have a file by month for all contracts down.</p>

Page 22

1 Thomas Reszler  
2 And for long-term customers I have a file for  
3 the customer. Interstate falls into spots.

4 Q. I understand that. I take it that  
5 Interstate is not a long-term customer?

6 A. No.

7 Q. Has it ever been?

8 A. No.

9 Q. Is Tauber a long-term customer?

10 A. No.

11 Q. Have they ever been?

12 A. No, no.

13 Q. For December 2007, how many  
14 contracts or how many spot contracts do you  
15 have in your file?

16 A. 20 to 30.

17 Q. Aside from the actual documents  
18 that comprise the spot contracts, do you keep  
19 some sort of spreadsheet that lists all of  
20 these contracts on a monthly basis?

21 A. Yes.

22 Q. What do you call that?

23 A. Contract summary file.

24 Q. What is in the contract summary  
25 file?

Page 24

1 Thomas Reszler

2 A. It's only spots.

3 Q. How do you record the transactions  
4 pursuant to the long-term customer agreements,  
5 if at all?

6 A. We just have a contract and -- a  
7 paper contract that is signed by both parties  
8 normally.

9 Q. The contract summary file that you  
10 are describing, did that comprise both  
11 purchases and sales?

12 A. Correct.

13 Q. Mitsubishi International  
14 Corporation purchases methanol at times  
15 pursuant to spot contracts?

16 A. Correct.

17 Q. Does Mitsubishi International  
18 Corporation also purchase ethanol pursuant to  
19 long-term contracts?

20 A. Yes.

21 Q. And one of the long-term contracts  
22 is with the joint venture that we talked  
23 about?

24 A. Correct.

25 Q. The contract summary file, does

Page 23

1 Thomas Reszler

2 A. It's the date of the contract, the  
3 date of the shipment, the buyer or seller,  
4 depending if it's a buy or sell, the name of  
5 the buyer or seller, the price and the volume,  
6 and whether there was a broker involved or  
7 not.

8 Q. Who maintains this file?

9 A. I do.

10 Q. How is the information input into  
11 the file?

12 A. On every sale.

13 Q. This is a computer-based file; is  
14 that correct?

15 A. Yes.

16 Q. MIC has the ability to access for  
17 any particular month the contract summary file  
18 which will list all of the transactions for  
19 that particular month?

20 A. Yes.

21 Q. Is that contract summary file  
22 separated with spot transactions in one file  
23 and long-term transactions in a different  
24 file, or are they combined into one total  
25 file?

Page 25

1 Thomas Reszler

2 that include both purchases and sales, or are  
3 they separate; is there a purchase file and a  
4 sales file, are they separate?

5 A. Both purchases and sales are in  
6 there.

7 Q. In the one file?

8 A. In the one file.

9 Q. Is this contract summary file  
10 something that you personally maintain?

11 A. Correct.

12 Q. Did you produce this file in  
13 connection with this case?

14 A. No, we did not.

15 Q. What documents did you produce from  
16 your personal files?

17 A. The contract, all e-mail exchanges  
18 that are in reference to the transactions with  
19 Interstate, the contract with Interstate, and  
20 the contract with Tauber.

21 Q. How do you define the contract with  
22 Interstate that you are testifying about?

23 A. It's a spot contract.

24 Q. How is that evidenced, this  
25 contract?

8 (Pages 26 to 29)

Page 26

1 Thomas Reszler  
 2 A. It is evidenced with their  
 3 willingness to purchase a barge from  
 4 Mitsubishi International Corporation in early  
 5 December and with our subsequent contracts.  
 6 Q. Take a look in Defendant's  
 7 Exhibit C at MIC 4, specifically the  
 8 December 4th, 2007 e-mail at 4:04 p.m. from  
 9 Mr. Ferguson-Steger to Ms. Cirillo.  
 10 Is that what you are claiming to be  
 11 the contract at issue in this case?  
 12 A. This is a reconfirmation before  
 13 sending the contract.  
 14 Q. When you say the contract, are you  
 15 referring to the document that has been  
 16 produced as MIC 6 through 9?  
 17 A. That is correct.  
 18 Q. This document 6 through 9, is this  
 19 a form that your company uses, sir?  
 20 A. Correct.  
 21 Q. Were you at all involved in its  
 22 preparation?  
 23 A. This is a standard form that is  
 24 prepared by our legal department.  
 25 Q. Is this a standard form used

Page 27

1 Thomas Reszler  
 2 throughout the chemicals division of MIC, if  
 3 you know?  
 4 A. I don't know.  
 5 Q. But it certainly is a form used by  
 6 the methanol and ethanol division of the  
 7 chemicals group?  
 8 A. That's correct.  
 9 Q. For how long has this form been  
 10 utilized by your group, sir?  
 11 A. For two to three years.  
 12 Q. Who typically signs these forms on  
 13 behalf of MIC?  
 14 A. If we sign, I would sign them. But  
 15 it is rare that we actually sign them.  
 16 Q. Why is it rare that you actually  
 17 sign them?  
 18 A. It is not customary for the spot  
 19 market to sign a contract. If we have  
 20 10 percent that are signed, that would be a  
 21 lot.  
 22 Q. Why is it not customary in the spot  
 23 market for Mitsubishi International  
 24 Corporation to sign the contract documents or  
 25 forms that is prepares?

Page 28

1 Thomas Reszler  
 2 A. Typically an e-mail reconfirming is  
 3 usually enough, and we don't require  
 4 signature.  
 5 Q. Why do you use these forms then?  
 6 A. Formality. Some companies need and  
 7 Sarbanes-Oxley tried to have more  
 8 documentation.  
 9 Q. How long, sir, have you been  
 10 involved in what I will describe as the bulb  
 11 chemicals industry?  
 12 A. Since 1999.  
 13 Q. Is it fair to say that during that  
 14 approximate eight-year period that you have  
 15 familiarity with the customs and practice of  
 16 the industry?  
 17 A. Yes.  
 18 MR. KORNSTEIN: I'm going to object  
 19 to questions other than fact questions.  
 20 He's not an expert; he's not here as an  
 21 expert witness. You don't have the right  
 22 to ask him expert questions.  
 23 MR. LESSER: Thank you. I will not  
 24 ask him any questions concerning opinion  
 25 testimony.

Page 29

1 Thomas Reszler  
 2 I'm going to limit my questions to  
 3 fact testimony based upon the witness'  
 4 experiences in the industry and his  
 5 familiarity with the customs and  
 6 practices in the industry that he has  
 7 worked in.  
 8 MR. KORNSTEIN: That is expert  
 9 testimony. I will note my objection.  
 10 MR. LESSER: That's fine.  
 11 MR. KORNSTEIN: It is not a subject  
 12 on your list of subjects of inquiry in  
 13 the notice of deposition.  
 14 BY MR. LESSER:  
 15 Q. Did you review the terms that  
 16 Mitsubishi International Corporation included  
 17 in the form contract that is attached as pages  
 18 6 through 9?  
 19 A. I don't remember.  
 20 Q. Do you recall providing any comment  
 21 when these terms and conditions were prepared?  
 22 A. I instruct Mr. Ferguson on the  
 23 price, and he takes it from there and  
 24 negotiates.  
 25 Q. I'm focusing on the general terms



Page 30

1 Thomas Reszler  
2 and conditions of sale set forth on pages 7  
3 through 9 of the document.

4 Did you provide any input in terms  
5 of the language selected for use in these  
6 general terms and conditions of sale?

7 A. No. These are provided by our  
8 legal department.

9 Q. Did the legal department transmit  
10 to you a draft of the general terms and  
11 conditions for your review before the final  
12 terms were selected for use?

13 A. Yes.

14 Q. Did you provide comments concerning  
15 the terms and conditions?

16 A. I don't remember.

17 Q. Would you describe the terms and  
18 conditions set forth in the document, pages 7  
19 through 9, as consistent with the industry  
20 practices that you are familiar with over the  
21 past eight years?

22 MR. KORNSTEIN: I will object to  
23 the question.

24 You may answer.

25 But I'm objecting for the reasons

Page 31

1 Thomas Reszler  
2 previously stated.

3 A. I believe they are fairly standard.

4 Q. Thank you. We have digressed a  
5 bit.

6 I want to return to the materials  
7 in your files that you reviewed for the  
8 purpose of producing to Interstate.

9 You talked about the e-mail  
10 exchanges, about the contract. Is there  
11 anything else from your files?

12 A. I don't think so.

13 Q. I believe you stated that in  
14 addition to your files, the files of  
15 Mr. Ferguson-Steger were reviewed for  
16 documents to be reviewed to Interstate?

17 A. Correct.

18 Q. Did you personally do that review?

19 A. I reviewed his files, too.

20 Q. Do you know what files Mr. Ferguson  
21 provided to you for your review before it was  
22 produced to Interstate?

23 A. Yes.

24 Q. What files, sir?

25 A. E-mail exchanges, there was

Page 32

1 Thomas Reszler  
2 inventory data, there was internal e-mails.  
3 There were internal reports regarding sales,  
4 and exchange e-mails between Interstate and  
5 Mr. Steger.

6 Q. The inventory data, what are you  
7 referring to, sir?

8 A. To the IMTT St. Rose inventories.

9 Q. How is that data maintained by the  
10 company?

11 A. This is data provided by the  
12 terminal.

13 Q. Does Mitsubishi International  
14 Corporation maintain data reflecting its  
15 inventory for specific periods of time of  
16 methanol in the United States?

17 A. Yes.

18 Q. How is that data maintained?

19 A. It's maintained as needed.

20 Q. For example, if I wanted to see for  
21 the month of December 2007 inventory levels  
22 that Mitsubishi International Corporation had  
23 for methanol both in St. Rose, in New Jersey  
24 and at Houston, where would I look to find  
25 that information?

Page 33

1 Thomas Reszler

2 A. In -- the most accurate is the  
3 inventory data released by the terminal that  
4 holds it for us.

5 Q. Is that data released by the  
6 terminals on a shipment-by-shipment basis, a  
7 weekly basis, monthly basis, or some other  
8 basis?

9 A. Monthly basis.

10 Q. I take it that Mitsubishi  
11 International Corporation receives this  
12 monthly data from three separate sources in  
13 the United States, New Jersey, St. Rose, and  
14 Houston?

15 MR. KORNSTEIN: Let me note a  
16 continuing objection to this line of  
17 questioning. It is not one of the  
18 subjects of inquiry. It's beyond the  
19 scope.

20 He can answer, but it is beyond  
21 what you listed as the subject matter of  
22 inquiry.

23 MR. LESSER: I will note for the  
24 record that I would respectfully disagree  
25 with counsel. It is certainly within the

10 (Pages 34 to 37)

Page 34	Page 36
<p>1 Thomas Reszler</p> <p>2 scope of --</p> <p>3 MR. KORNSTEIN: We don't have to</p> <p>4 argue about it.</p> <p>5 MR. LESSER: It's within the scope</p> <p>6 of the allegations in the complaint. We</p> <p>7 don't need to argue.</p> <p>8 A. That is correct.</p> <p>9 Q. Is that data then culled together</p> <p>10 in one location within the company's files?</p> <p>11 A. Yes.</p> <p>12 Q. You keep a spreadsheet, in other</p> <p>13 words?</p> <p>14 A. Yes.</p> <p>15 Q. It's a computerized spreadsheet?</p> <p>16 A. The one we receive from the</p> <p>17 terminal is the paper. It depends on the</p> <p>18 terminal. Some are just Excel spreadsheets</p> <p>19 and some are just TDF.</p> <p>20 Q. Does Mitsubishi International</p> <p>21 Corporation incorporate the data it receives</p> <p>22 from the terminal into an electronic database</p> <p>23 maintained by Mitsubishi International</p> <p>24 Corporation for inventory of methanol?</p> <p>25 A. Yes.</p>	<p>1 Thomas Reszler</p> <p>2 provided to Interstate in response to its</p> <p>3 discovery request?</p> <p>4 A. We provided the inventory sheet</p> <p>5 from the terminal, yes.</p> <p>6 Q. What about the internal Mitsubishi</p> <p>7 International Corporation inventory sheet that</p> <p>8 you testified to that is a compilation of the</p> <p>9 inventory data received from the terminals?</p> <p>10 A. I don't recall.</p> <p>11 Q. Can you take a moment and look at</p> <p>12 Defendant's Exhibit C and see if you can find</p> <p>13 the Mitsubishi International Corporation</p> <p>14 inventory sheet that you are testifying about?</p> <p>15 MR. KORNSTEIN: I want to note to</p> <p>16 that many of the questions before we had</p> <p>17 the deposition notice copied many of the</p> <p>18 questions by counsel that went into</p> <p>19 business relationships and details of</p> <p>20 plaintiff's business are outside the</p> <p>21 scope of this deposition. I'm just</p> <p>22 noting it for the record.</p> <p>23 MR. LESSER: Obviously I</p> <p>24 respectfully disagree.</p> <p>25 A. I don't think we provided our own</p>
Page 35	Page 37
<p>1 Thomas Reszler</p> <p>2 Q. What is that spreadsheet or what is</p> <p>3 that called?</p> <p>4 A. Inventory sheets.</p> <p>5 Q. These inventory sheets, are they</p> <p>6 maintained by Mitsubishi International</p> <p>7 Corporation on a monthly basis, weekly basis,</p> <p>8 or some other basis?</p> <p>9 A. As needed; whenever there is a</p> <p>10 change.</p> <p>11 Q. For any time there is a change in</p> <p>12 inventory, the inventory sheet is updated; is</p> <p>13 that correct?</p> <p>14 A. Correct.</p> <p>15 Q. Can you access the inventory sheet</p> <p>16 and see what the inventory levels were for any</p> <p>17 period of time?</p> <p>18 A. I believe so.</p> <p>19 Q. For example, if I wanted to see the</p> <p>20 inventory levels of methanol of Mitsubishi</p> <p>21 International Corporation for the period</p> <p>22 December 1st, 2007 to January 10th, 2008, you</p> <p>23 can provide that information to me?</p> <p>24 A. Correct.</p> <p>25 Q. Have the inventory sheets been</p>	<p>1 Thomas Reszler</p> <p>2 internal inventories which actually show the</p> <p>3 same data that is in there.</p> <p>4 Q. That is in where, sir?</p> <p>5 A. In those inventories provided by</p> <p>6 IMTT on page 37 of Exhibit C.</p> <p>7 Q. Okay. You are referring to</p> <p>8 page 37. I will ask you to look at pages 37</p> <p>9 through page 41, because it looks to be all</p> <p>10 part of the same document.</p> <p>11 Is that correct, that 37 through 41</p> <p>12 are part of the same document?</p> <p>13 A. That is correct.</p> <p>14 Q. This is not a document that is</p> <p>15 employed by MIC?</p> <p>16 A. No.</p> <p>17 Q. You are familiar with this</p> <p>18 document, I take it?</p> <p>19 A. Yes.</p> <p>20 Q. What is this document then?</p> <p>21 A. This shows any movement in and out</p> <p>22 of the tank we have in IMTT, and the</p> <p>23 deliveries show the volumes shipped out and</p> <p>24 the book balance after the deliveries.</p> <p>25 Q. IMTT, what does that refer to?</p>

Page 38

1 Thomas Reszler  
 2 A. International Maytex Tank Terminal.  
 3 Q. And this is the terminal that you  
 4 are referring to in St. Rose, Louisiana?  
 5 A. Yes.  
 6 Q. There's a reference to tank number  
 7 116. I take it that is a tank that is  
 8 Mitsubishi International Corporation uses?  
 9 A. Yes.  
 10 Q. Does Mitsubishi International  
 11 Corporation use any other tanks other than  
 12 tank 116 in St. Rose?  
 13 A. No.  
 14 Q. So that this document entitled  
 15 cumulative inventory listing for 12/07 through  
 16 12/07, this is the inventory listing provided  
 17 to Mitsubishi International Corporation from  
 18 IMTT for tank 116?  
 19 A. That's correct.  
 20 Q. Look at the left-hand column on the  
 21 far left inventory date, and then it has dates  
 22 with a number below it. Do you know what the  
 23 number below signifies?  
 24 A. I believe it's called release  
 25 number.

Page 39

1 Thomas Reszler  
 2 Q. On the top it looks like there are  
 3 columns for transfers in, deliveries, and  
 4 transfers out. Do you see that?  
 5 A. Yes.  
 6 Q. I had difficulty in seeing that  
 7 this report shows the transfers in and out.  
 8 Can you show me if it does?  
 9 I see delivery, but it's hard to  
 10 see whether they were coming into the tanks or  
 11 being released from the tank. Or maybe I'm  
 12 just misreading something?  
 13 A. Deliveries are transfers out as  
 14 well, but --  
 15 Q. As well as transfers, no?  
 16 A. No. First, I'm not the logistics  
 17 specialist, so I don't review documents  
 18 frequently. Transfers in is blank because we  
 19 probably didn't have any delivery in the tank  
 20 in that period.  
 21 Deliveries are products taken out  
 22 of the tank going into either trucks or rail  
 23 cars, and are usually small quantities; in  
 24 here, about 4,000 gallons to 28,000 gallons.  
 25 Transfers out are either barge

Page 40

1 Thomas Reszler  
 2 loadings or by pipeline transfer to another  
 3 tank.  
 4 Q. For example, looking at page 37, on  
 5 December 1st there appears to be a transfer  
 6 out of about 867,000 gallons.  
 7 Looking at this document, are you  
 8 able to determine if there was a transfer out  
 9 to a barge or a pipeline transfer?  
 10 A. I can't tell.  
 11 Q. The only one that I see on this  
 12 report that looks to be a transfer out of  
 13 significant volume is on December 12th in the  
 14 amount of 429,000 gallons. Do you see that?  
 15 A. Yes.  
 16 Q. Is it your testimony that you don't  
 17 believe that there were any transfers in  
 18 during the month of December?  
 19 A. Let me correct this. I see one on  
 20 page 38 on December 11st. It shows AMBASSADOR  
 21 NORRIS.  
 22 Q. Is that a freighter?  
 23 A. That's a vessel, yes, a tanker.  
 24 That delivered us 1.3 million gallons.  
 25 Q. And then it looks like there was

Page 41

1 Thomas Reszler  
 2 another delivery on December 19th; is that  
 3 correct? Or maybe not?  
 4 A. On December 19th, that's a  
 5 delivery.  
 6 Q. Okay. That's a transfer out?  
 7 A. That's a transfer out.  
 8 Q. What about on December 29th? I see  
 9 something referencing JOSE BRIGHT, and about  
 10 750,000 gallons.  
 11 A. That's another transfer in.  
 12 Q. According to this report in the  
 13 beginning of December, as of December 1st,  
 14 2007, there was approximately 2.06 million  
 15 gallons of methanol in tank 116?  
 16 A. Correct.  
 17 Q. At the end of December, the month  
 18 of December 31st, it was down to  
 19 1.4 million gallons; is that correct?  
 20 A. Correct.  
 21 Q. The transaction, the pipe transfer  
 22 transaction to Tauber that is at least  
 23 referenced in the complaint, that is not shown  
 24 on this document, is it, sir?  
 25 A. I do not see it on this document.



12 (Pages 42 to 45)

Page 42	Page 44
<p>1 Thomas Reszler</p> <p>2 Q. Take a look at page 36. Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. What is this, sir?</p> <p>6 A. That is an order, what we call an</p> <p>7 order sheet that we send either to our</p> <p>8 terminal or to a vendor when we have an order</p> <p>9 for a barge or pipeline transfer.</p> <p>10 Q. My read of this document -- and</p> <p>11 correct me if I'm wrong -- is that the tank</p> <p>12 transfer to Tauber of approximately 420,000</p> <p>13 gallons was loaded on January 2nd, 2007.</p> <p>14 A. It says it's required to be loaded</p> <p>15 on January 2nd.</p> <p>16 Q. Do you know whether it was actually</p> <p>17 loaded or transferred?</p> <p>18 A. I don't recall the exact date.</p> <p>19 Q. Was it sometime in January?</p> <p>20 A. Yes, I believe so.</p> <p>21 Q. What is the basis of that belief,</p> <p>22 sir?</p> <p>23 A. If it is ordered on January 2nd,</p> <p>24 usually it will be loaded very close to that</p> <p>25 date. I don't recall the exact date of</p>	<p>1 Thomas Reszler</p> <p>2 Q. I take it that Mitsubishi</p> <p>3 International Corporation internal records</p> <p>4 would reflect its inventory levels for both</p> <p>5 December '07, January '08, February '08, and</p> <p>6 beyond; is that correct?</p> <p>7 A. Yes.</p> <p>8 MR. LESSER: I will call for the</p> <p>9 production of that as well.</p> <p>10 Q. These inventory records, are they</p> <p>11 maintained by you or by them that report to</p> <p>12 you within the department?</p> <p>13 A. By people who report to me.</p> <p>14 Q. Who specifically?</p> <p>15 A. Kathy Flood, Mr. Ferguson,</p> <p>16 Mr. Ingbal.</p> <p>17 Q. Okay. I will switch gears for a</p> <p>18 moment.</p> <p>19 Do you recall, sir, in or about</p> <p>20 mid-December being informed that Interstate</p> <p>21 Chemical had reported to Mitsubishi</p> <p>22 International Corporation a Coast Guard issue</p> <p>23 concerning the destination that -- strike</p> <p>24 that.</p> <p>25 Do you recall receiving information</p>
Page 43	Page 45
<p>1 Thomas Reszler</p> <p>2 shipment, but I believe it might be in that</p> <p>3 document.</p> <p>4 Q. Do you believe that it would be --</p> <p>5 in looking at page 37 through 41 -- it would</p> <p>6 be reflected in the cumulative inventory</p> <p>7 listing for January '08 through January '08?</p> <p>8 A. I believe so.</p> <p>9 Q. And you have that document in your</p> <p>10 files, I take it?</p> <p>11 A. I believe so.</p> <p>12 MR. LESSER: I will call for the</p> <p>13 production of that document.</p> <p>14 Q. Before we started talking about</p> <p>15 this inventory list that is provided to</p> <p>16 Mitsubishi International Corporation from</p> <p>17 IMTT, we were talking about the records that</p> <p>18 Mitsubishi International Corporation itself</p> <p>19 maintains based upon the information that is</p> <p>20 provided by the various terminals, including</p> <p>21 IMTT.</p> <p>22 Would Mitsubishi International</p> <p>23 Corporation internally report its inventory</p> <p>24 reflected in that tank transfer?</p> <p>25 A. Yes.</p>	<p>1 Thomas Reszler</p> <p>2 about Interstate Chemical having trouble with</p> <p>3 the order that was placed in early December?</p> <p>4 A. Yes.</p> <p>5 Q. Who did you receive that</p> <p>6 information from?</p> <p>7 A. Mr. Ferguson-Steger.</p> <p>8 Q. Look at Bates page 12, please.</p> <p>9 This appears to be an e-mail string, the top</p> <p>10 e-mail from Mr. Steger to you on</p> <p>11 December 18th, 2007 at approximately 6:40 p.m.</p> <p>12 attaching an e-mail he received from</p> <p>13 Ms. Cirillo earlier that day.</p> <p>14 Is that how you first received</p> <p>15 information from Mr. Steger about the trouble</p> <p>16 that Interstate was reporting?</p> <p>17 A. He might have mentioned it orally</p> <p>18 before, I don't recall.</p> <p>19 Q. Do you recall receiving this</p> <p>20 e-mail?</p> <p>21 A. Yes.</p> <p>22 Q. I take it from just looking at the</p> <p>23 e-mail that Mr. Steger was looking to you to</p> <p>24 make the decision as to how to respond to</p> <p>25 Interstate?</p>

Page 46

1 Thomas Reszler  
2 A. Correct.  
3 Q. Did you provide him with directions  
4 on how to respond?  
5 A. Yes.  
6 Q. What did you say?  
7 A. I agreed with the statement that we  
8 could -- if it helped Interstate -- delay the  
9 shipment later, as long as they would fulfill  
10 their obligations.  
11 Q. Look at Bates page 54, specifically  
12 the top e-mail in this e-mail string reflected  
13 on the page which appears to be a response  
14 from you at 7:03 on December 18th to  
15 Mr. Steger's e-mail to you; is that correct?  
16 A. Correct.  
17 Q. So that this is your response to  
18 him?  
19 A. Correct.  
20 Q. When you say we can delay the  
21 shipment, of course, what type of delay did  
22 you contemplate?  
23 A. It depends on what they need.  
24 Typically when companies have problems, we are  
25 usually willing to cooperate with them and

Page 47

1 Thomas Reszler  
2 to -- so it could be in a week to a month. It  
3 depends.  
4 Q. I take it that that was not the  
5 first time in your experience with Mitsubishi  
6 International Corporation that a party to an  
7 agreement with Mitsubishi International  
8 Corporation had trouble or had a problem?  
9 A. No. There are barge delays because  
10 of weather, so we have to be able to be a bit  
11 flexible.  
12 Q. Have you ever experienced, either  
13 on the purchasing side or the selling side,  
14 difficulty with the United States Coast Guard?  
15 A. No.  
16 Q. You never had any Coast Guard  
17 issues in any of the ports?  
18 A. Not that I recall.  
19 Q. Never had any Coast Guard issues  
20 with any of your customers' facilities?  
21 A. Not that I recall.  
22 Q. Aside from Coast Guard issues,  
23 Department of Homeland Security issues,  
24 anything like that?  
25 A. Not that I can recall.

Page 48

1 Thomas Reszler  
2 Q. Have you ever dealt with any type  
3 of government regulations, problems with  
4 respect to any shipment on the buying side or  
5 on the selling side?  
6 A. I don't think so.  
7 Q. Aside from the weather, do you  
8 recall, as you sit here today, in your  
9 approximate to eight to nine years worth of  
10 experience what, if any, other types of  
11 problems you have encountered in your career?  
12 A. We could have a consumer who has a  
13 plant problem and has shut down and needs to  
14 delay.  
15 Q. Any others?  
16 A. We could have, on the other side,  
17 the supplier who has a vessel delay and is not  
18 able to supply on time, and asks us to delay.  
19 That's the most obvious that comes to my mind.  
20 Q. I believe you testified that MIC,  
21 at least in part, purchases methanol from the  
22 joint venture in Venezuela?  
23 A. Yes.  
24 Q. Have you ever experienced any  
25 political or governmental issues concerning

Page 49

1 Thomas Reszler  
2 Venezuelan release of methanol that you have  
3 encountered in your career?  
4 A. No major problems.  
5 MR. KORNSTEIN: Note for the record  
6 my objection to the line of questioning.  
7 It is beyond the scope of a 30(b)(6)  
8 deposition by definition. These are not  
9 30(b)(6) types of questions.  
10 MR. LESSER: Again, I respectfully  
11 disagree with counsel.  
12 Q. Looking back at the document that  
13 comprises the general terms and conditions of  
14 sale that Mitsubishi International Corporation  
15 uses and, from your testimony has signed  
16 approximately 10 percent of the time,  
17 specifically paragraph 6 where it says:  
18 Force majeure: Seller shall not be  
19 liable for any delay of or failure to perform  
20 its obligation hereunder for any cause beyond  
21 its reasonable control which affects seller or  
22 any other person, whether known or unknown to  
23 buyer, involved in the sale, manufacturing,  
24 supply, shipment, or delivery of the goods.  
25 Shipment or delivery dates shall be extended

14 (Pages 50 to 53)

Page 50	Page 52
<p>1 Thomas Reszler</p> <p>2 for a period equal to the time lost by reason</p> <p>3 of any such cause; provided, however, that if</p> <p>4 any such delay exceeds 90 days, either party</p> <p>5 shall have the right to cancel this contract</p> <p>6 with respect to such shipment or delivery by</p> <p>7 written notice to the other party without any</p> <p>8 liabilities to the other party. Force majeure</p> <p>9 shall not excuse any nonpayment by buyer.</p> <p>10 Except as otherwise provided herein, UCC</p> <p>11 Section 2-615 shall govern the rights of both</p> <p>12 parties hereto in the event of such delay or</p> <p>13 non-performance.</p> <p>14 Has your company ever dispersed its</p> <p>15 rights pursuant to this provision in item 6?</p> <p>16 A. We did once in 2002.</p> <p>17 Q. For what reason or what was the</p> <p>18 delay caused by?</p> <p>19 A. When there was a general strike in</p> <p>20 Venezuela.</p> <p>21 Q. Aside from that time, do you recall</p> <p>22 any other time?</p> <p>23 A. No.</p> <p>24 Q. Do you recall any time when any of</p> <p>25 your customers attempted to exercise its</p>	<p>1 Thomas Reszler</p> <p>2 Q. Do you know if Mr. Steger</p> <p>3 communicated that to Interstate?</p> <p>4 A. Yes, I believe so. I don't recall</p> <p>5 the means of communication, but he</p> <p>6 communicated the answer.</p> <p>7 Q. Were you at all involved in the</p> <p>8 direct communication between Mitsubishi</p> <p>9 International Corporation and Interstate</p> <p>10 concerning this issue?</p> <p>11 A. Mr. Ferguson had a communication</p> <p>12 with Interstate.</p> <p>13 Q. I will rephrase the question for</p> <p>14 you. Did you personally have any</p> <p>15 communications with anyone from Interstate?</p> <p>16 A. No.</p> <p>17 Q. You delegated that to Mr. Steger?</p> <p>18 A. Correct.</p> <p>19 Q. And to the best of your knowledge,</p> <p>20 he kept you abreast of his communication with</p> <p>21 Interstate?</p> <p>22 A. Correct.</p> <p>23 Q. Did you understand that in response</p> <p>24 to your directive and Mr. Ferguson informing</p> <p>25 Interstate that we will not cancel, Interstate</p>
Page 51	Page 53
<p>1 Thomas Reszler</p> <p>2 rights under this provision?</p> <p>3 A. I don't recall.</p> <p>4 Q. With respect to the situation in</p> <p>5 2002 where there was the general strike, did</p> <p>6 that strike cause a delay beyond the 90 days?</p> <p>7 A. It did cause a delay. I can't</p> <p>8 really recall the duration of the delay.</p> <p>9 Q. Did it ultimately result in a</p> <p>10 cancellation of the transaction?</p> <p>11 A. We actually performed all of our</p> <p>12 contracts. Legally the joint venture declares</p> <p>13 force majeure Tisasi (phonetic) and Mitsubishi</p> <p>14 International Corporation declared force</p> <p>15 majeure.</p> <p>16 Q. Do you know how long the delay</p> <p>17 lasted before you were able to find other</p> <p>18 sources of methanol as a result of the strike?</p> <p>19 A. I don't recall.</p> <p>20 Q. Let's return to Bates page 54 and</p> <p>21 your e-mail to Mr. Steger saying: We can</p> <p>22 delay the shipment of course, but no way to</p> <p>23 cancel.</p> <p>24 Was that your decision to make?</p> <p>25 A. Yes.</p>	<p>1 Thomas Reszler</p> <p>2 attempted to explain the situation with the</p> <p>3 Coast Guard in an effort to allow it to cancel</p> <p>4 as a result of that?</p> <p>5 MR. KORNSTEIN: Objection to form.</p> <p>6 You may answer if you understand.</p> <p>7 A. Correct.</p> <p>8 Q. That was reported to you by</p> <p>9 Mr. Steger either orally or through e-mails he</p> <p>10 forwarded to you?</p> <p>11 A. Yes, correct.</p> <p>12 Q. Did any of that communication</p> <p>13 between Mr. Steger and the people at</p> <p>14 Interstate cause to you rethink or reconsider</p> <p>15 your original conclusion that you would agree</p> <p>16 to delay shipment but would not allow them to</p> <p>17 walk away?</p> <p>18 MR. KORNSTEIN: Objection to form.</p> <p>19 You may answer.</p> <p>20 A. No.</p> <p>21 Q. Did you attempt to inquire as to</p> <p>22 the specifics of the Coast Guard issue?</p> <p>23 A. No.</p> <p>24 Q. Take a look at Bates page 21, for</p> <p>25 example, and specifically Ms. Cirillo's</p>



Page 54

1 Thomas Reszler  
2 December 19th, 2007 e-mail to Mr. Steger where  
3 she says at the bottom: This puts me in the  
4 middle of a real jam. Would it help if we can  
5 commit to the next spot barge where our tanks  
6 are at level where we can hold the spot barge?

7 Do you recall receiving a copy of  
8 that e-mail?

9 A. Yes.

10 Q. Did that cause you to reconsider  
11 the issue in any way?

12 MR. KORNSTEIN: Objection to form.  
13 You may answer.

14 A. No.

15 Q. You took a position and you did  
16 change that position, sir?

17 A. Correct.

18 Q. Had Mitsubishi International  
19 Corporation done business with Interstate  
20 prior to December 2007?

21 A. Yes.

22 Q. What type of volume?

23 A. Similar.

24 Q. Did you consider them a good  
25 customer?

Page 56

1 Thomas Reszler  
2 e-mail from Mr. Steger to Ms. Knox with a  
3 carbon copy to you of a --

4 MR. KORNSTEIN: Yes.

5 MR. LESSER: Do you have the  
6 unredacted? Because there some questions  
7 that I have and maybe during the break to  
8 the extent that we can do it attorneys'  
9 eyes only, we can deal with those issues.

10 MR. KORNSTEIN: We will deal with  
11 it when you want.

12 MR. LESSER: That's fine.

13 Q. At some point after you advised  
14 Mr. Steger that although you would allow the  
15 delivery to be delayed, you would not allow  
16 Interstate to walk away from the decision it  
17 made to sell 10 MB to another customer?

18 A. I'm sorry. Can you rephrase?

19 MR. LESSER: I will withdraw that  
20 question.

21 Mark this reply affidavit as  
22 Defendant's Exhibit D.

23 (Defendant's Exhibit D, reply  
24 affidavit, marked for identification, as  
25 of this date.)

Page 55

1 Thomas Reszler

2 A. I have no opinion as long as they  
3 pay and -- perform and pay.

4 Q. Do you recall there being an issue  
5 with respect to them paying you or performing?

6 A. Not prior to this case.

7 Q. Take a look at Bates page 53, and  
8 specifically the e-mail string here. It  
9 appears that you are cc'd in the e-mail from  
10 Mr. Steger and Mr. Velez which responds to an  
11 e-mail from Mr. Velez concerning a 38,000  
12 balance on the Interstate account.

13 Does that --

14 A. Yes, I see that.

15 Q. Do you recall in or about the time  
16 frame that you made the decision that although  
17 you would agree to delay the shipment, you  
18 would not let Interstate walk away?

19 A. No, I don't recall that.

20 Q. Take a look at Bates page 28. And  
21 there is, on the top, there is a redaction and  
22 cross-reference of the privilege and redaction  
23 log.

24 I would like to get confirmation  
25 that the only thing that is redacted is an

Page 57

1 Thomas Reszler

2 MR. LESSER: Mark this affidavit as  
3 Defendant's Exhibit E.

4 (Defendant's Exhibit E, affidavit,  
5 marked for identification, as of this  
6 date.)

7 BY MR. LESSER:

8 Q. I hand you what has been marked for  
9 identification as Defendant's Exhibits D and  
10 E. I will refer you first to Mr. Steger's  
11 reply affidavit.

12 Have you seen this affidavit  
13 before, sir?

14 A. Yes.

15 Q. In paragraph two Mr. Steger states  
16 that: When MIC agreed to sell the methanol to  
17 Interstate, we knew that we had a vessel with  
18 methanol due to arrive about mid-December  
19 2007.

20 Do you see that?

21 A. Yes.

22 Q. If you will look at Bates page 18  
23 of Defendant's Exhibit C marked for  
24 identification, and specifically Mr. Steger's  
25 e-mail to Ms. Cirillo dated December 19th,

16 (Pages 58 to 61)

Page 58	Page 60
<p>1 Thomas Reszler</p> <p>2 2007, specifically the third sentence says:</p> <p>3 We reserve this product in our inventory and,</p> <p>4 if we liquidate now -- and he goes on.</p> <p>5 Where Mr. Steger states that we</p> <p>6 reserve this product in our inventory, what is</p> <p>7 he referring to?</p> <p>8 MR. KORNSTEIN: Objection to form.</p> <p>9 You may answer if you know.</p> <p>10 A. This means we have agreed to a sale</p> <p>11 to Interstate for 10,000 barrels. And if we</p> <p>12 hadn't sold to Interstate, then we would have</p> <p>13 sold it to somebody else before that at the</p> <p>14 time of the sale. So we have a book with</p> <p>15 purchase and sales, and we have a balance.</p> <p>16 That means that we sold to them and</p> <p>17 it's down in our book or in our P&amp;L. If we</p> <p>18 hadn't sold to Interstate, we would have sold</p> <p>19 to somebody else at that time at the similar</p> <p>20 price.</p> <p>21 Q. The reservation of inventory, is</p> <p>22 that noted in this book?</p> <p>23 A. No. In this case we have the</p> <p>24 inventory, so we have the product for them.</p> <p>25 But we could also have -- because we buy a</p>	<p>1 Thomas Reszler</p> <p>2 e-mail confirmation?</p> <p>3 A. At the time of confirmation, we</p> <p>4 make sure we have product available at the</p> <p>5 time for the time agreed shipment. In that</p> <p>6 case it's December 20th.</p> <p>7 So on December 4th, we thought we</p> <p>8 might not have the product before</p> <p>9 December 20th. But things change, and it</p> <p>10 happened that we had it all along.</p> <p>11 Q. The reservation of inventory that</p> <p>12 Mr. Steger represented to Ms. Cirillo in his</p> <p>13 e-mail to her, that was not actually done on</p> <p>14 December 4th?</p> <p>15 A. I'm sorry. Can you repeat?</p> <p>16 Q. I'm not exactly clear based upon</p> <p>17 your testimony. I want to return to his</p> <p>18 e-mail?</p> <p>19 MR. KORNSTEIN: What page number?</p> <p>20 MR. LESSER: 18.</p> <p>21 Q. Steger told Ms. Cirillo: We</p> <p>22 reserve this product in our inventory.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. What I'm trying to understand is</p>
Page 59	Page 61
<p>1 Thomas Reszler</p> <p>2 lot, we could also have purchased it in</p> <p>3 purchase contracts with another supplier,</p> <p>4 another vendor. In this case we happened to</p> <p>5 have the product in the tank.</p> <p>6 Q. So that the product that was</p> <p>7 reserved for Interstate, according to</p> <p>8 Mr. Steger, was in tank number 116?</p> <p>9 A. In that case, yes.</p> <p>10 Q. When was it put into tank 116, this</p> <p>11 product that was reserved for Interstate?</p> <p>12 A. In this case, judging from the</p> <p>13 inventory statement, it was available all</p> <p>14 along in the month of December.</p> <p>15 Q. Let's look at that inventory list</p> <p>16 again, pages 37 through 41. The question is</p> <p>17 the methanol that Mr. Steger represented to</p> <p>18 Ms. Cirillo was reserved for Interstate, where</p> <p>19 is that reflected in this cumulative inventory</p> <p>20 listing for December '07?</p> <p>21 A. You can see that the book balance</p> <p>22 is also greater than 420,000 gallons.</p> <p>23 Q. So that the reservation of</p> <p>24 inventory based upon your testimony took place</p> <p>25 on December 4th, 2007 when there was this</p>	<p>1 Thomas Reszler</p> <p>2 two things; when this reservation took place</p> <p>3 and what documents, if any, or other evidence</p> <p>4 that you have that evidence this reservation.</p> <p>5 A. We reserved it on December 4th and</p> <p>6 we agreed that we would have 420,000 gallons</p> <p>7 for Interstate on December 20th or later and</p> <p>8 we don't have the document to support that,</p> <p>9 although the inventory shows it, but at some</p> <p>10 point we could have less -- we could have had</p> <p>11 less at that time and we can commit to what we</p> <p>12 can do. We never -- we strive to perform and</p> <p>13 fulfill our obligation to our customer.</p> <p>14 Q. I understand that. I'm trying to</p> <p>15 understand when this reservation occurred.</p> <p>16 And it sounds based upon your testimony that</p> <p>17 you have no documents evidencing any</p> <p>18 reservation of 10 MB of methanol specifically</p> <p>19 for Interstate in December '07; is that</p> <p>20 correct?</p> <p>21 MR. KORNSTEIN: I object to the</p> <p>22 question. It is mischaracterizing the</p> <p>23 prior testimony. He already said --</p> <p>24 MR. LESSER: Counsel, please. You</p> <p>25 know what you can and cannot do in</p>



Page 62

1 Thomas Reszler  
2 response to a question. And this is a  
3 critical question as far as Interstate is  
4 concerned. I would respectfully request  
5 there be no speaking objections. Let the  
6 witness answer the question, please.

7 A. We reserve it by the fact that we  
8 have it in the tank and we guarantee to  
9 Interstate we have the product in the tank or  
10 in other form. We can buy for example from  
11 another supplier in St. Rose so we guaranteed  
12 on December 4th that for December 20 or later  
13 we have 420,000 gallons for them.

14 Q. Prior to December 20th, according  
15 to the cumulative inventory listing, there was  
16 the lowest volume of methanol in tank 116 was  
17 804,000 gallons, right?

18 A. Yes.

19 Q. That was on December 10; is that  
20 correct?

21 A. 804, that is correct. Actually 723  
22 on December 29.

23 Q. I'm sorry. You're right 723 on  
24 December 9 and then on -- on December 29, on  
25 that same day the JOSE BRIGHT came in and

Page 64

1 Thomas Reszler  
2 on December 13 where he told there would be a  
3 delay at the end of December because they were  
4 waiting for a vessel to come in?

5 A. I heard it, but I don't recall that  
6 telephone call.

7 Q. So you don't know one way or other  
8 if it actually took place?

9 A. No.

10 Q. Paragraph 4 of Mr. Steger's reply  
11 affidavit refers to MIC floating inventory.  
12 Do you see that?

13 A. Yes.

14 Q. What does that mean, floating  
15 inventory?

16 A. That's terminology we use for  
17 saying that it's just inventory. I don't  
18 think it has a specific meaning, floating  
19 inventory.

20 Q. Do you utilize that term in your  
21 business, sir, floating inventory?

22 A. Occasionally, but --

23 Q. You don't know?

24 A. -- floating inventory would be  
25 technically on a vessel.

Page 63

1 Thomas Reszler  
2 unloaded 756,000 gallons into tank 116, right?

3 A. Yes.

4 Q. Take a look at Exhibit D  
5 Mr. Steger's reply affidavit and specifically  
6 paragraph two, second sentence when MIC agreed  
7 to sell the methanol to Interstate we knew  
8 that we had a vessel with methanol due to  
9 arrive by mid December '07.

10 Do you see that?

11 A. Yes.

12 Q. Which vessel is he talking about?

13 A. He is --

14 Q. Is he talking about the JOSE  
15 BRIGHT?

16 A. Probably the AMBASSADOR NORRIS on  
17 December 11th.

18 Q. You say probably, do you know?

19 A. Yes, I believe it is this one, the  
20 AMBASSADOR NORRIS.

21 Q. Did you review Ms. Cirillo's  
22 affidavit submitted to the court in opposition  
23 to Mitsubishi International Corporation's  
24 prior summary judgment motions where she  
25 talked about a call that she had with Steger

Page 65

1 Thomas Reszler  
2 Q. You mean inventory that is floating  
3 in the water?

4 A. Right. When we say inventory --  
5 floating inventory when we load in Venezuela  
6 it's already on our books and we have a  
7 floating inventory at St. Rose or some other  
8 place.

9 Q. Is it your testimony that the  
10 methanol that was reserved for Interstate as a  
11 result of the December 4th, 2007 e-mail was  
12 floating inventory, meaning on a vessel from  
13 Venezuela heading to the United States?

14 A. Or some other place. This is an  
15 ongoing operation and we don't weight to have  
16 the product in the tank to make the actual  
17 sale and that's why we when we make sales when  
18 we have a vessel that is due to arrive on a  
19 certain date we will sell at that date usually  
20 plus a week or so to leave some room for  
21 change, un expected events.

22 Q. Which vessel was the methanol that  
23 was reserved for Interstate, on which vessel?

24 A. I believe that it was the  
25 AMBASSADOR NORRIS.

18 (Pages 66 to 69)

Page 66

1 Thomas Reszler  
 2 Q. The AMBASSADOR NORRIS which came  
 3 into report for December 2007 came in to port  
 4 on December 11 according to the cumulative  
 5 inventory listing; is that correct?  
 6 A. Yes.  
 7 Q. When Mitsubishi International  
 8 Corporation reserves for specific customer  
 9 inventory of methanol that is floating,  
 10 meaning on a vessel, does it noted some place  
 11 in its files which vessel has been designated  
 12 as the reserved inventory for a particular  
 13 customer?  
 14 A. No, we don't do that.  
 15 Q. If you will look at Defendant's  
 16 Exhibit E which is Mr. Steger's affidavit  
 17 dated or sworn to on March 26, 2008 and  
 18 specifically I'm going to refer you to  
 19 paragraph 20 which states:  
 20 As a result, MIC lost a \$210,000  
 21 difference between the price of the barge of  
 22 methanol at 12.55 purchase price Interstate  
 23 agreed to and the 2.5 price that MIC was  
 24 forced to accept on December 21?  
 25 Do you see that?

Page 67

1 Thomas Reszler  
 2 A. Yes.  
 3 Q. Do you agree with Mr. Steger's  
 4 characterization that MIC, your company, was  
 5 forced to accept the 2.5 price?  
 6 A. 2.5 was the only bid on the market  
 7 on that day.  
 8 Q. Who was responsible for obtaining  
 9 bids on the market?  
 10 A. I did.  
 11 Q. What did you do to obtain bids or  
 12 attempt to obtain bids on the market?  
 13 A. I called the broker.  
 14 Q. Did you call GFK or Star Supply?  
 15 A. Yes.  
 16 Q. I will call them GFI or Star Supply  
 17 based on the information I received from the  
 18 Web; is that fair?  
 19 A. Yes.  
 20 Q. Why did you call GFI Star Supply?  
 21 A. Because they are the only broker  
 22 brokering methanol.  
 23 Q. When did you first call them?  
 24 A. I believe I called them on the  
 25 morning of the 21 of December.

Page 68

1 Thomas Reszler  
 2 Q. Was this the first time you called  
 3 GFI Star Supply?  
 4 A. No I --  
 5 Q. In connection with this issue with  
 6 Interstate?  
 7 A. Yes, to replaces that barge to  
 8 Interstate, yes, that is the first time.  
 9 Q. You did not call them on the 19 or  
 10 the 20?  
 11 A. Yes, I did the. I call every day.  
 12 I check the market every day.  
 13 Q. When you say you check the market  
 14 what do you mean by that?  
 15 A. I check what are the bids and the  
 16 offers on that day or on that moment.  
 17 Q. Where are did you check on the bids  
 18 and the offers at that moment, was that on the  
 19 Internet?  
 20 A. With GFI.  
 21 Q. You solely went through this one  
 22 broker to check the market?  
 23 A. When I check the market I call  
 24 usually a broker and I call -- I might call  
 25 traders directly but methanol is not a liquid

Page 69

1 Thomas Reszler  
 2 market and there is very -- it there can be  
 3 days without any bids or any offers or  
 4 sometimes weeks so the most liquid or the fast  
 5 test way to sell a barge or buy a barge is  
 6 through the broker.  
 7 Q. Is GFI Star Supply the only broker  
 8 that deals in methanol in the United States?  
 9 A. That I know.  
 10 Q. Did you call any of the traders?  
 11 A. I don't recall calling any traders  
 12 because it was -- I was on my way to the  
 13 airport.  
 14 Q. Where were you going?  
 15 A. I was going abroad.  
 16 Q. Did you direct any of your  
 17 subordinates such as Mr. Steger to call  
 18 traders or other entities to find a potential  
 19 buyer?  
 20 A. No; just the trader.  
 21 Q. What time did you call GFI on the  
 22 way to the airport, was it an early morning  
 23 night, new recall?  
 24 A. I don't remember exactly. I think  
 25 I called in the morning and it was the day

1 Thomas Reszler

2 before and there was no market. I think I --  
3 I think I should have made the sales at the  
4 end of the day, at the ends of the afternoon.

5 Q. I take it that you did not call any  
6 traders later on in the day after your flight  
7 landed or before you decide to do make this  
8 transactions through GFI?

9 A. The fast test way to find the  
10 market is through a broker.

11 Q. I understand that might be fast  
12 tested way but it is not the only way is it,  
13 sir?

14 A. No.

15 Q. I understand that you were looking  
16 for the fastest way to enter into a  
17 transaction, but I'm trying to find out what  
18 efforts, if any, you made to find the best  
19 price possible aside from doing it as  
20 expeditiously as possible.

21 A. It is also the best prices because  
22 in a small market, all of the traders call  
23 that same broker.

24 Q. Did you contact any of your  
25 long-term supply customer or any other